

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**DEFENDANTS' STATEMENT OF
MATERIAL FACTS IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed.R.Civ.P. 56 and LR 56.1, Defendants Cumberland Farms, Inc. ("the Company" or "CFI") and Emile Tayeh ("Tayeh") submit this statement of material facts as to which there is no genuine dispute.

1. The Company is a Delaware corporation with its principal office and place of business at 777 Dedham Street, Canton, MA ("Canton office" or "Canton"). Affidavit of Harry Brenner, ¶ 3.
2. For over 30 years, the Company has operated convenience stores and gas stations (collectively "stores") in many of the New England and mid-Atlantic states and Florida. *Id.*, ¶ 4.
3. The Company sells gasoline and/or diesel fuel (collectively, "gas") at retail to the general public, through its own stores, and also sells gas at wholesale to dealers who resell it at retail to the general public. Affidavit of Emile Tayeh, ¶ 3.
4. The gas sold at the Company's stores is kept in underground storage tanks at those locations. It is delivered to the stores by means of tanker trucks, many of which are owned

and operated by the Company. The tankers are loaded with gas at storage terminals which (until December 30, 1993) were operated by the Company as part of its Gulf Oil division.

Id.

5. The storage, handling and transportation of gasoline and other petroleum products are subject to regulation by state and federal environmental agencies under applicable state, local and federal environmental laws and regulations. *Id.*, ¶ 4.
6. Tayeh is an individual who has worked for the Company since December 17, 1990. Since the time he was hired, Tayeh has had overall responsibility for the Company's compliance with federal and state environmental laws in the states where the Company operates. *Id.*, ¶¶ 2, 5.
7. Tayeh is Lebanese by birth and he became a naturalized citizen of the United States in 1990.
8. From the time Tayeh was hired, the Company has relied upon outside contractors who specialize in environmental work ("consultants") to investigate and assess its environmental compliance and remediation needs at the various sites which it owns, controls and/or operates, and to design and implement solutions for environmental compliance and remediation at those sites. The Company has relied upon its own employees to oversee the work of these consultants. *Id.*, ¶ 6; Udemba deposition, Vol. 1, Tr. 189-190, 199-200, 202-203; Vol. 2, Tr. 207-208 (hereinafter "Tr." followed by the volume number in **boldface**, followed by the page reference, e.g., "Tr. **1**:189-190").
9. Tayeh's first position with the Company was Construction and Environmental Engineer and in that position he reported directly to Dick Longton, Vice President ("VP") of Construction. *Id.*, ¶ 7.

10. Andrew Beland (“Beland”) is an individual who came to work for the Company on October 2, 1989. He was hired to work in the Company’s Gulf Oil Division, where he was made responsible for overseeing compliance with federal and state environmental laws, in the operation of the Company’s petroleum storage terminals. *Id.*, ¶ 8; Affidavit of Patricia Firing, ¶ 3.
11. On March 2, 1991, Beland was transferred to the Construction Department, where he continued to be responsible for overseeing compliance with federal and state environmental laws, in the operation of the Company’s petroleum storage terminals. Tayeh Aff., ¶ 9; Firing Aff., ¶ 3.
12. On March 16, 1991, the Company formed the Environmental Affairs Department as an administrative subdivision of its Construction Department. Tayeh was promoted to Manager of Environmental Affairs, and continued to report to Longton. Beland was assigned to the Environmental Affairs Department and reported to Tayeh. Tayeh Aff., ¶ 10.
13. Plaintiff Oliver Udemba (“Udemba”) is black and from Nigeria. Complaint and Answer, ¶ 6.
14. On May 20, 1991, Udemba was hired as a Project Manager in the Environmental Affairs Department, at a salary of \$23,000 per year. In that position he reported directly to Tayeh. Udemba has worked continuously for the Company since May 20, 1991. Firing Aff., ¶ 5; Tayeh Aff., ¶ 11.
15. Colleen Cesarini (“Cesarini”) is an individual who worked in the Company’s Human Resources Department from 1986 to December 29, 2000. Affidavit of Foster Macrides, ¶ 5; Firing Aff., ¶ 4.

16. Udemba was interviewed and hired by Tayeh and Cesarini. Tr. 2:95; Tayeh Aff., ¶ 11.
17. At various times, the project managers in the Environmental Affairs Department have been referred to internally as “engineers.” The use of the term “engineer” instead of “manager” did not reflect any change in job responsibilities or status within the Company. Firing Aff., ¶ 6.
18. On October 1, 1992, Tayeh was promoted to Director of Environmental Affairs and in that position he reported directly to Harry Brenner, who at that time was the Senior VP of Retail Operations. Tayeh Aff., ¶ 12.
19. Foster Macrides is an individual who has been the Company’s VP of Human Resources since 1986. Macrides Aff., ¶ 2; Tr. 2:67-68.
20. On May 1, 1992, the Company filed for reorganization under Chapter 11 of the federal Bankruptcy Code. When the Company filed for bankruptcy, all wages and salaries of the Company’s employees were “frozen.” Macrides Aff., ¶ 3.
21. In a memo to the Company’s department heads dated October 1, 1992, Macrides announced the lifting of the wage “freeze” and an across-the-board increase in wages and salaries of 3% for all employees of the Company. Macrides Aff., ¶ 4; Tr. 2:131; Udemba Deposition Exhibit 4, Bates # 017.¹
22. Udemba’s salary was increased on October 1, 1992, from \$23,000 to \$23,689.64. Firing Aff., ¶ 7.
23. On December 13, 1992, Beland was promoted to Project Management Supervisor. In that position, Beland had supervision over Udemba and from three to five other employees in the Environmental Affairs Department, including (at various times): Derrick Golden,

¹ References to the exhibits identified at Udemba's deposition will be abbreviated as "Dep.Ex." followed by the exhibit number and the Bates stamp number, where applicable.

David Brochu and Kevin McCabe, Mark Finnegan, Michele Paul and Joseph Friesen.

Beland continued to be responsible for overseeing compliance with federal and state environmental laws, in the operation of the Company's petroleum storage terminals.

Tayeh Aff., ¶ 13.

24. Udemba is not claiming that he should have been promoted to Project Management Supervisor instead of Beland. Tr. 2:121.
25. On December 13, 1992, Udemba's salary was increased to \$25,000. Firing Aff., ¶ 8.
26. On April 17, 1993, Udemba's salary was increased to \$27,500. *Id.*, ¶ 9.
27. Udemba was promoted to senior project manager on August 30, 1993. *Id.*, ¶ 10; Tayeh Aff., ¶ 11.
28. It was Tayeh who initiated and approved Udemba's promotion to senior project manager. Tayeh Aff., ¶ 11.
29. Udemba's salary was increased on August 30, 1993 to \$30,813.12, in part because of his promotion to senior project manager and in part to reflect a merit increase. Firing Aff., ¶ 11.
30. Udemba's salary was increased on October 1, 1993 to \$32,500. *Id.*, ¶ 12.
31. On December 12, 1993, Tayeh was promoted to VP of Environmental Affairs, and in that position he continued to report directly to Brenner, who at that time was the Executive VP and Chief Operating Officer ("COO") of the Company. Tayeh Aff., ¶ 14.
32. On December 30, 1993, the Company emerged from bankruptcy. Brenner Aff., ¶ 8.

33. On December 30, 1993, the Company transferred certain assets, including its petroleum storage terminals, to a newly formed limited partnership, named “Gulf LP.” Brenner Aff., ¶ 8.
34. Since he became COO of the Company in May of 1993, Brenner has cut costs by eliminating and/or consolidating a number of management positions. Brenner Aff., ¶ 9.
35. Beland quit the Company on December 1, 1994, and went to work for Gulf LP. Tayeh Aff., ¶ 16.
36. The Company sold a number of stores while it was in bankruptcy and in the year following its emergence from bankruptcy. Tayeh Aff., ¶ 16; Brenner Aff., ¶ 10. Between September of 1991 and December 1, 1994, the number of stores which sold gas at retail to the public declined from 734 to 631. *Id.*
37. In the year after the Company emerged from bankruptcy, the Company settled some major environmental litigation. Tayeh Aff., ¶ 16; Brenner Aff., ¶ 10.
38. When Beland left the Company, Brenner and Tayeh decided to eliminate the supervisory position formerly held by Beland, because (1) Beland had been responsible for environmental oversight of the petroleum storage terminals, and the sale of those assets to Gulf LP a year earlier meant that the Company was no longer doing that work, (2) the decline in the number of stores which sold gas and the settlement of environmental litigation further reduced the workload of the Environmental Affairs Department, and (3) the Company had emerged from bankruptcy just one year before, and Brenner was determined to keep down the Company’s operating costs. Tayeh Aff., ¶ 16; Brenner Aff., ¶ 10.

39. The benefits of eliminating Beland's position were so obvious that Tayeh and Brenner never even discussed promoting one of the other project managers to replace Beland. Tayeh Aff., ¶ 16; Brenner Aff., ¶ 10.
40. Dep.Ex. 5, Bates # 077, displays an organizational chart dated October 2003. This chart was created by Debra Damon. The only reason there is a box labeled "Environmental Engineers" on this chart, is that Damon did not have sufficient space to display the names of Udemba and the other engineers horizontally, on the same level as Tyler, Lehtola and Etzold. Damon did not intend anything on the chart to signify that there was an open supervisory position between Tayeh and the project engineers. Affidavit of Debra Damon, ¶ 4.
41. When Darry Stuart, VP of Distribution, resigned from the Company in 1998, Brenner did not promote anyone to Vice President in his place. Instead, Brenner consolidated Stuart's position with another position held by Robert Handforth, VP of Manufacturing and Distribution. When Handforth was laid off in 1999, Brenner assumed some of his responsibilities and assigned the remainder to George P. Haseotes, VP of the Wholesale Petroleum Division. Brenner Aff., ¶ 11.
42. When Longton, the VP of Construction, retired on February 1, 1999, Brenner did not promote anyone to Vice President in his place. Instead, Brenner assumed some of Longton's responsibilities and assigned the remainder to Don Holt, Chief Financial Officer. On April 3, 2000, Brenner consolidated the positions of VP of Construction and VP of Environmental Affairs, and assigned Tayeh the duties of both positions. *Id.*, ¶ 12.

43. Kevin McCabe (“McCabe”) is an individual who was hired to work as a project manager in the Environmental Affairs Department on January 20, 1994 at a salary of \$27,500. Firing Aff., ¶ 13.
44. Udemba is not claiming that McCabe was ever paid more than he was. Tr. 3:28-29.
45. At the time McCabe was hired, Udemba’s salary was \$32,500. On April 1, 1994, Udemba’s salary was increased to \$34,125. On August 30, 1994, Udemba’s salary was increased to \$35,660. At that time, McCabe’s salary was still \$27,000. Firing Aff., ¶ 14.
46. McCabe and Udemba received salary increases in the following percentages:

<u>Percentage Salary Increase</u>		
	<u>McCabe</u>	<u>Udemba</u>
1992		8.7%
1993		30.2%
1994		9.6%
1/20/95	28%	
8/30/95		5%
1/20/96	15.5	
8/30/96		5%
1/9/97		12%
1/20/97	5.5	
8/30/97		10.1%
1/20/98	10.2	
8/30/98		4%

Firing Aff., ¶ 15.

47. All of Udemba’s salary increases were authorized and approved by Tayeh. Tayeh Aff., ¶ 11.
48. Angela Pimental (“Pimental”) is an individual who was hired by the Company on September 25, 2000. At the time she was hired, Pimental had a Bachelor of Science degree in Environmental Geography. *Id.*, ¶ 21; Affidavit of Angela Pimental, ¶¶ 2, 3.

49. Udemba is not claiming that Pimental was ever paid more than he was. Tr. 3:50.
50. Pimental was promoted to senior project manager 32 months after she was hired; Udemba was promoted to senior project manager 27 months after he was hired. Tayeh Aff., ¶ 21.
51. Since 1987, the Company's practice has been to furnish a "Company car" to employees in the position of Vice President or above, and to employees whose job duties required them to travel more than 15,000 miles per year. Firing Aff., ¶ 16; Tr. 2:161; Dep.Ex.4, Bates # 012.
52. Tayeh was furnished with a Company car when he was made VP of Environmental Affairs in 1993. Tayeh Aff., ¶ 22.
53. Beland was furnished with a Company car because his job duties required him to regularly visit the petroleum storage terminals that he was responsible for, in Massachusetts, New York, Ohio, Pennsylvania, Maine, Connecticut and New Jersey. After the petroleum storage terminals were sold to Gulf LP on December 30, 1993, Beland was required to relinquish his Company car on April 4, 1994. Tayeh Aff., ¶ 22.
54. Other than Beland and Tayeh, no employee in the Environmental Affairs Department has ever been furnished with a Company car. Tayeh Aff., ¶ 22; Tr. 2:164-165.
55. The Company's records show that Udemba never sought reimbursement for more than 2897 miles per year, for business-related travel. Firing Aff., ¶ 17.
56. Udemba has no records of his own to prove that he ever met the 15,000 mile per year threshold required for a Company car, and does not recall how many miles he may have driven on Company business that he did not seek reimbursement for. Tr. 1:143; 3:84.
57. Other than Tayeh, no one in the Environmental Affairs Department has ever been furnished with a cell phone for their exclusive use. Tayeh Aff., ¶ 23; Tr. 3:82.

58. Lorraine Higgins (“Higgins”) is an individual who was employed by the Company as Office Supervisor in the Environmental Affairs Department from August 14, 1995 until March 18, 2002. The Company did not furnish Higgins with access to the Internet at work, at any time during her employment. Firing Aff., ¶ 18.
59. Udemba’s performance evaluation, dated September 8, 1995, was initially signed by Higgins. Tr. 2:177; Dep.Ex. 5, Bates # 39-41.
60. Udemba’s 1995 evaluation has a space reserved for the employee’s comments and in that space Udemba wrote:
- I report to the vice president, Emile Tayeh. It is a major discrepancy to indicate Lorraine Higgins, office supervisor, as my supervisor.
- Tr. 2:178; Dep.Ex. 5, Bates # 41.
61. This was the only comment Udemba wrote on the evaluation, and he does not remember if he said anything to Tayeh about the evaluation, in addition to this written comment. Tr. 2:178-179.
62. When Tayeh received Udemba’s comment, he whited out Higgins’ name and substituted his signature for hers. Tr. 2:179; Dep.Ex. 5, Bates # 42-45.
63. It was Tayeh, and not Higgins, who rated Udemba in each category of the evaluation. Tayeh had asked Higgins to type up the evaluation from his handwritten notes. Tayeh did not authorize Higgins to sign the evaluation as Udemba’s “supervisor.” Tayeh Aff., ¶ 24.
64. In 1995, Udemba brought to Tayeh’s attention the fact that the Company directory listed him as “project manager,” when it should have listed him as “senior project manager.” Tayeh corrected this typographical error as soon as Udemba called it to his attention. Tayeh Aff., ¶ 25; Dep.Ex. 4, Bates # 005 and 006; Tr. 2:145-148.
65. Udemba cannot identify any “directives” that Higgins issued to him. Tr. 2:214-215.

66. Udemba does not know if Higgins issued directives to him because of his race. Tr. 2:216.
67. Muriel Tyler (“Tyler”) is an individual who succeeded Higgins as Office Supervisor.
Firing Aff., ¶ 19.
68. Udemba does not know if Tyler’s treatment of him was due to his race. Tr. 3:67-68
69. On one occasion, between 1994 and 1996, Udemba spoke to Cesarini about his
employment with the Company. Tr. 2:65-68.
70. At the time he spoke to Cesarini, Udemba was aware that she reported to Macrides, the
head of the Human Resources Department, and he understood that he could have spoken to
Macrides if he was not satisfied with Cesarini’s handling of his concerns. Tr. 2:67-70.
71. Udemba has no reason to believe that either Cesarini or Macrides was biased against
Africans or African-Americans. Tr. 2:70.
72. Udemba never attempted to speak with Cesarini on any other occasion, and never spoke
with Macrides or with anyone else in the Human Resources Department, to complain about
discrimination or any other aspect of his employment with the Company. Macrides Aff., ¶
5; Tr. 2:68.
73. The only reason that Udemba made no attempt to speak with Cesarini again, or to speak
with Macrides or anyone else in the Human Resources Department, was that he was busy
with work. Tr. 2:69.
74. Udemba did not file a charge of discrimination with the Equal Employment Opportunity
Commission and the Massachusetts Commission Against Discrimination until on or after
December 16, 2003. Dep.Ex. 7, Bates # 125, 127, 138.

75. Udemba has never heard Tayeh, or anyone else at Cumberland Farms, use a racial epithet, or any term of disparagement to refer to people who are African or African-American. Tr. 2:63-64.
76. Udemba has never seen a Company document that characterizes a person's race as a factor in their compensation, promotion or any other aspect of their employment, and he does not know if such a document has ever existed. Tr. 2:59-61.
77. Udemba claims that in or about December of 1994, in a conversation with Tayeh, Tayeh said to him, "the construction and other departments of the company would not accept you." Complaint, ¶ 23. Tayeh did not make any reference to anyone's race, in that conversation. Tr. 2:56-58.
78. Udemba claims that in this same conversation, he said to Tayeh, "If President Bill Clinton felt that way about Colin Powell, he could not have become the Chairman of the Joint Chief [sic] of Staff." Complaint, ¶ 24. Udemba cannot recall if Tayeh said anything in response to this statement. Tr. 2:54-55.
79. [intentionally omitted]
80. [intentionally omitted]
81. Udemba obtained his LSP license in 1997. Tr. 1:179.
82. Massachusetts law does not require the Company to directly employ its own LSP. Tr. 1:260-263.
83. Ever since Massachusetts has required the use of LSP's, the consultants used by the Company have employed their own LSP's. Tr. 1: 260-261; Tayeh Aff., ¶ 26.

84. All reports filed with the Massachusetts Department of Environmental Protection in the Company's behalf that required the seal of an LSP were filed by the LSP's who are employed by the consultants. Tr. 1:261-262.
85. Udemba has never filed a report imprinted with his own seal as an LSP in behalf of the Company, and he has never been the "LSP of record" on any of the Company's sites. Tr. 1:275.
86. Udemba did not need to be licensed as an LSP, in order to oversee the work performed by the LSP's employed by the consultants. Tayeh Aff., ¶ 26; Tr. 3:109-111.
87. Udemba asked Tayeh to furnish him with a personal reference to support his application for his LSP license in 1993, and Tayeh did furnish him with such a reference. Tayeh Aff., ¶ 11.
88. Tayeh never gave Pimental or McCabe supervisory authority over Udemba. Tayeh Aff., ¶¶ 20, 21.
89. Udemba has never rendered any services to the Company as an LSP. Tayeh Aff., ¶ 26.
90. Tayeh has never promised to give any current employee of the Company a contract to perform work for the Company as an outside contractor or consultant. Tayeh Aff., ¶ 27.

DATED at Portland, Maine this 30th day of May, 2006.

CUMBERLAND FARMS, INC. and
EMILE C. TAYEH,

By their attorneys,

MOON, MOSS & SHAPIRO, P.A.
Ten Free Street, P. O. Box 7250
Portland, ME 04112-7250
(207) 775-6001

/s/ Philip J. Moss

Philip J. Moss BBO# 358020

CERTIFICATE OF SERVICE

I, Philip J. Moss, attorney for Cumberland Farms, Inc. and Emile Tayeh, hereby certify that a paper copy of Defendants' Statement of Material Facts in Support of Their Motion for Summary Judgment, electronically filed with the Clerk of Court using the ECF system, will be sent this date by first-class U.S. mail, postage prepaid to the following:

Aderonke O. Lipede, Esq.
434 Massachusetts Avenue, Suite 401
Boston, MA 02118
(BBO # 567431)

Dated: May 30, 2006

/s/ Philip J. Moss
Philip J. Moss, Esq., BBO# 358020
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**AFFIDAVIT OF HARRY BRENNER IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Harry Brenner, being duly sworn, does aver as follows:

1. I reside at 105 Morse Avenue, Attleboro, MA. 02703.
2. I have been employed by the Defendant Cumberland Farms, Inc. ("the Company") since 1981. Since August 18, 2003, I have been the President and Chief Operating Officer of the Company.
3. The Company is a Delaware corporation with its principal office and place of business at 777 Dedham St., Canton, MA ("Canton office" or "Canton").
4. For over 30 years, the Company has operated convenience stores and gas stations (collectively "stores") in many of the New England and mid-Atlantic states and Florida.
5. I was promoted to Senior Vice President of Retail Operations in 1990. On October 1, 1992, I promoted Emile Tayeh to Director of Environmental Affairs and in that position he reported directly to me.
6. In March of 1993 I was promoted to Executive Vice President and in May of 1993 I was promoted to Chief Operating Officer ("COO") of the Company.

7. On December 12, 1993, I promoted Emile Tayeh to Vice President of Environmental Affairs, and in that position he continued to report directly to me.
8. On December 30, 1993, the Company emerged from bankruptcy. Also on that date, the Company transferred certain assets, including its petroleum storage terminals, to a newly formed limited partnership, named "Gulf LP." Although the Company owned 2/3 of Gulf LP it was only a limited partner and as such it was no longer directly involved in or responsible for the management of those terminals.
9. Since I became COO of the Company, I have cut costs by eliminating and/or consolidating a number of management positions.
10. In December of 1994, Andrew Beland quit the Company and went to work for Gulf LP. After talking to Emile Tayeh, I decided that it was not necessary to replace Beland, for several reasons. First, Beland had been responsible for environmental oversight of the petroleum storage terminals, and the transfer of those assets to Gulf LP a year earlier meant that we were no longer doing that work. Secondly, the Company had sold a number of stores during the bankruptcy and in the year following its emergence from bankruptcy. The number of stores which sold gas had declined from 734 in September of 1991 to 631 by the time Beland left. Also, in the past year the Company had settled some major environmental litigation. These factors meant a further reduction in the work of the Environmental Affairs Department. After the Company emerged from bankruptcy I was determined to keep down the Company's operating costs. The benefits of eliminating Beland's position were obvious to me and I said as much

to Emile. He and I never even discussed promoting one of the other project managers to replace Beland.

11. When Darry Stuart, Vice President of Distribution, resigned from the Company in 1998, I did not promote anyone to Vice President in his place. Instead, I consolidated Stuart's position with another position held by Robert Handforth, Vice President of Manufacturing and Distribution. When Handforth was laid off in 1999, I assumed some of his responsibilities and assigned the remainder to George P. Haseotes, Vice President of the Wholesale Petroleum Division. In this way, I eliminated the positions of two (2) Vice Presidents at a substantial savings to the Company.
12. When Dick Longton, the Vice President of Construction, retired on February 1, 1999, I did not promote anyone to Vice President in his place. Instead, I assumed some of Longton's responsibilities and assigned the remainder to Don Holt, Chief Financial Officer. On April 3, 2000, I consolidated the position of Vice President of Construction with the position held by Emile Tayeh, Vice President of Environmental Affairs, and assigned Emile the duties of both positions. In this way, I eliminated the position of another Vice President. I did that to save the Company money, and the idea of making Emile the Vice President of Construction and promoting someone else to be Vice President of Environmental Affairs, never even occurred to me.
13. The foregoing facts are based upon my personal knowledge and are true and accurate to the best of my knowledge and recollection.

14. The foregoing facts are based upon my personal knowledge and are true and accurate to the best of my knowledge and recollection.

Harry Brenner
HARRY BRENNER

Subscribed and sworn to before me this 4 day of May, 2006.

Michelle Almeida
Notary Public

My commission expires: 10/8/2010



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**AFFIDAVIT OF EMILE TAYEH IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendant Emile Tayeh, being duly sworn, does aver as follows:

1. I reside at 65 Bryant St., West Bridgewater, MA 02379.
2. I am Lebanese by birth. I became a naturalized citizen of the United States in 1990. I have been employed by the Defendant Cumberland Farms, Inc. ("the Company") since December 17, 1990.
3. During the time that I have worked for the Company, it has sold gasoline and/or diesel fuel (collectively, "gas") at retail to the general public, through its own stores and gas stations (collectively, "stores"). The Company also sells gas at wholesale to dealers who resell it at retail to the general public. The gas is delivered to the stores and dealers by means of tanker trucks, many of which are owned and operated by the Company. The tankers are loaded with gas at storage terminals which (until December 30, 1993) were owned and operated by the Company as part of its Gulf Oil division.
4. The storage, handling and transportation of gasoline and other petroleum products are subject to regulation by state and federal environmental agencies under applicable state, local and federal environmental laws and regulations.

5. Since the time I was hired, I have had overall responsibility for the Company's compliance with federal, state and local environmental laws in the states where the Company operates.
6. During the entire time that I have worked for the Company, it has relied upon outside contractors who specialize in environmental work ("consultants") to investigate and assess its environmental compliance and remediation needs at the various sites which it owns, controls and/or operates, and to design and implement solutions for environmental compliance and remediation at those sites. The Company has used its own employees to oversee the work of these consultants.
7. My first position with the Company was Construction and Environmental Engineer and in that position I reported directly to Dick Longton, Vice President ("VP") of Construction.
8. When I was hired, Andrew Beland was working in the Company's Gulf Oil Division, where his responsibilities included overseeing compliance with federal, state and local environmental laws, in the operation of the Company's petroleum storage terminals.
9. On March 2, 1991, Andrew Beland transferred into the Construction Department, where he continued to be responsible for overseeing compliance with federal and state environmental laws, in the operation of the Company's petroleum storage terminals.
10. On March 16, 1991, the Company formed the Environmental Affairs Department as an administrative subdivision of its Construction Department. I was promoted

to Manager of Environmental Affairs, and continued to report to Longton. Beland was assigned to the Environmental Affairs Department and reported to me.

11. Oliver Udemba has worked continuously for the Company in its Environmental Affairs Department since May 20, 1991. Along with Colleen Cesarini, I interviewed and hired Oliver. His first position was Project Manager and in that position he reported directly to me. I have authorized and approved all of Oliver's salary increases, since the time he was hired, and I initiated and approved his promotion to Senior Project Manager in August of 1993. In 1993, at Oliver's request, I furnished him with a personal reference in support of his application for an LSP license.
12. On October 1, 1992, I was promoted to Director of Environmental Affairs and in that position I reported directly to Harry Brenner, who at that time was the Senior VP of Retail Operations.
13. On December 13, 1992, I promoted Beland to Project Management Supervisor. In that position, Beland had supervision over Oliver Udemba and three to five other employees in the Environmental Affairs Department, including (at various times), Derrick Golden, David Brochu, Kevin McCabe, Mark Finnegan, Michele Paul and Joseph Friesen, all of whom are Caucasian. Beland continued to be responsible for overseeing compliance with federal, state and local environmental laws, in the operation of the Company's petroleum storage terminals.
14. On December 12, 1993, I was promoted to Vice President of Environmental Affairs, and in that position I continued to report directly to Harry Brenner, who

at that time was the Executive VP and Chief Operating Officer ("COO") of the Company.

15. On December 30, 1993, the Company transferred certain assets, including its petroleum storage terminals, to a newly formed limited partnership, named "Gulf LP." From and after that date, the Company was no longer directly involved in or responsible for the management of those terminals.
16. On December 1, 1994, Andy Beland quit the Company and went to work for Gulf LP. When I told Harry Brenner that Andy was leaving, we discussed whether it was necessary to replace him. The terminals which Andy had been responsible for had been sold to Gulf LP the year before. During the bankruptcy proceeding, the Company had sold all of the stores it had been operating on the Pennsylvania turnpike. In the year since it had emerged from bankruptcy, the Company had sold all of its stores in upstate New York and had settled some major environmental litigation. After reviewing these factors, Harry said that he didn't see the need to replace Andy and I agreed. We did not discuss promoting any of the other project managers to replace Andy.
17. I have read the Complaint in this case, and in Paragraphs 23 and 24 of the Complaint, Oliver Udemba describes a conversation that he claims he had with me in December of 1994, about his desire to fill the position vacated by Andy Beland. Oliver did speak to me about that, before I spoke with Harry Brenner about it. I told Oliver that no decision had been made on replacing Andy, which was true at the time that he and I first spoke about it. After I spoke with Harry, I told Oliver that we were not going to replace Andy. Oliver did not mention race,

or racial discrimination, in these conversations, and neither did I. I did not tell Oliver, "the construction and other departments of the company would not accept you," and Oliver did not say to me, "If President Bill Clinton felt that way about Colin Powell, he could not have become the Chairman of the Joint Chief [sic] of Staff."

18. Shortly after I told Oliver that we were not going to fill Andy Beland's position, Colleen Cesarini told me that Oliver had come to see her about it. Colleen arranged for the two of us to meet with Oliver to explain again why no one was going to be promoted to replace Andy. Oliver did not say anything about race, or racial discrimination, or Colin Powell in that meeting.
19. On April 3, 2000, Harry Brenner consolidated my position as Vice President of Environmental Affairs with the position formerly held by Dick Longton, Vice President of Construction, and assigned me the duties of both positions.
20. Kevin McCabe worked in the Environmental Affairs Department from 1994 to 1998. When he left, Kevin held the same position that Oliver Udemba held, Senior Project Manager. I never gave Kevin any authority to supervise Oliver Udemba, or to give him orders or instructions.
21. In September of 2000, I hired Angela Pimental. At the time she was hired, Angela had a Bachelor of Science degree in Environmental Geography. On March 26, 2003, thirty months after she was hired, Angela received a promotion to Senior Project Manager. Oliver Udemba was promoted to Senior Project Manager 27 months after he was hired. I never gave Angela any authority to supervise Oliver, or to give him orders or instructions.

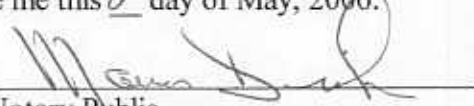
22. I never promised Oliver Udemba a Company car. Andy Beland and I are the only employees in the Environmental Affairs Department who ever were furnished with a Company car. I was not furnished with a Company car until I became a Vice President, in December of 1993. Andy Beland had a Company car when he joined the Environmental Affairs Department in 1991. Andy needed a car because he regularly visited the petroleum storage terminals that he was responsible for, in Massachusetts, New York, Ohio, Pennsylvania, Maine, Connecticut and New Jersey. When those terminals were sold in December of 1993, Andy's business travel fell off, and he was required to relinquish his Company car on April 4, 1994.
23. I am the only employee in the Environmental Affairs Department who has ever been furnished with a cell phone for his exclusive use.
24. Lorraine Higgins ("Higgins") is an individual who was employed by the Company as Office Supervisor in the Environmental Affairs Department from August 14, 1995 until March 18, 2002. I asked Lorraine to type up Oliver Udemba's 1995 performance evaluation, from my handwritten notes. It was I, and not Lorraine, who determined the scores and other contents of that evaluation. I did not direct Lorraine to type my name in the space reserved for "supervisor" or to sign the evaluation. I assumed that she would type my name into that space, and when Oliver brought to my attention the fact that she had typed in her own name I instructed her to correct that. I also did not authorize Lorraine to sign the evaluation, and I changed that, too. I don't know why Lorraine put her own name on the evaluation, and I can only assume that she misunderstood what I wanted

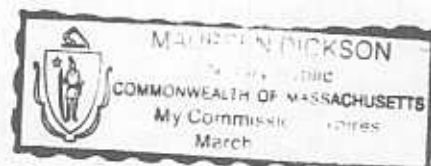
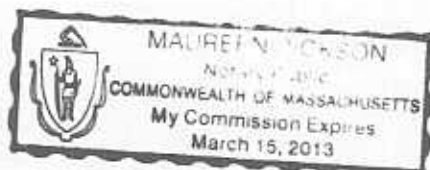
her to do. The evaluation is dated September 8, 1995, and as of that date Lorraine had only been working for me for three and a half weeks.

25. In 1995, Oliver Udemba brought to my attention the fact that the Company directory listed him as "project manager," when it should have listed him as "senior project manager." I corrected this typographical error as soon as Oliver called it to my attention.
26. The Company has never directly employed anyone as a Licensed Site Professional ("LSP"). The Company has always relied upon its outside consultants to provide LSP services, as necessary. When Oliver Udemba obtained his LSP license, I congratulated him on that achievement, but told him that the Company did not need him to perform any services as an LSP, and he never has rendered any services to the Company as an LSP. Oliver did not need to be licensed as an LSP, in order to oversee the work performed by the LSP's employed by our outside consultants.
27. I have never promised to give any current employee of the Company a contract to perform work for the Company as an outside contractor or consultant
28. The foregoing facts are based upon my personal knowledge and are true and accurate to the best of my knowledge and recollection.


EMILE TAYEH

Subscribed and sworn to before me this 8th day of May, 2006.


Notary Public
My commission expires: 3/15/2013



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**AFFIDAVIT OF PATRICIA A. FIRING
IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Patricia A. Firing, being duly sworn, does aver as follows:

1. I reside at 30 Prudence Crandall Lane, No. Easton, MA. 02356.
2. I am employed by the Defendant Cumberland Farms, Inc. ("the Company") as Director of Human Resources. In this position, I have authorized access to the personnel and payroll records of current and former employees of the Company.
3. Andrew Beland ("Beland") came to work for the Company on October 2, 1989. He was hired to work in the Company's Gulf Oil Division. On March 2, 1991, Beland was transferred to the Construction Department.
4. Colleen Cesarini ("Cesarini") was employed as a Manager in the Company's Human Resources Department from 1986 to December 29, 2000.
5. On May 20, 1991, Udemba was hired as a Project Manager in the Environmental Affairs Department, at a salary of \$23,000 per year.
6. At various time, the project managers in the Environmental Affairs Department have been referred to internally as "engineers." The

use of the term "engineer" instead of "manager" did not reflect any change in job responsibilities or status within the Company.

7. Udemba's salary was increased on October 1, 1992, from \$23,000 to \$23,689.64.
8. On December 13, 1992, Udemba's salary was increased to \$25,000.
9. On April 17, 1993, Udemba's salary was increased to \$27,500.
10. Udemba was promoted to senior project manager on August 30, 1993.
11. Udemba's salary was increased on August 30, 1993 to \$30,813.12, in part because of his promotion to senior project manager and in part to reflect a merit increase.
12. Udemba's salary was increased on October 1, 1993 to \$32,500.
13. Kevin McCabe ("McCabe") is an individual who was hired to work as a project manager in the Environmental Affairs Department on January 20, 1994 at a salary of \$27,500.
14. At the time McCabe was hired, Udemba's salary was \$32,500. On April 1, 1994, Udemba's salary was increased to \$34,125. On August 30, 1994, Udemba's salary was increased to \$35,660. At that time, McCabe's salary was still \$27,000.
15. McCabe and Udemba received salary increases in the following percentages:

Percentage Salary Increase


	<u>McCabe</u>	<u>Udemba</u>
1992		8.7%
1993		30.2%
1994		9.6%
1/20/95	28%	
8/30/95		5%
1/20/96	15.5	
8/30/96		5%
1/9/97		12%
1/20/97	5.5	

8/30/97		10.1%
1/20/98	10.2	
8/30/98		4%

16. Since 1987, the Company's practice has been to furnish a "Company car" to employees in the position of Vice President or above, and to employees whose job duties required them to travel more than 15,000 miles per year.
17. The Company's records show that Udemba never sought reimbursement for more than 2897 miles per year, for business-related travel.
18. Lorraine Higgins ("Higgins") was employed by the Company as Office Supervisor in the Environmental Affairs Department from August 14, 1995 until March 18, 2002. The Company did not furnish Higgins with access to the Internet at work, at any time during her employment.
19. Muriel Tyler ("Tyler") succeeded Higgins as Office Supervisor.
20. The foregoing facts are based upon my personal knowledge and are true and accurate to the best of my knowledge and recollection.


PATRICIA A. FIRING

Subscribed and sworn to before me this 5 day of May, 2006.


Notary Public
My commission expires: 10/8/2010



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**AFFIDAVIT OF FOSTER MACRIDES
IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Foster Macrides, being duly sworn, does aver as follows:

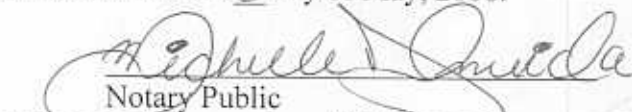
1. I reside at 226 Aldrich Avenue, Warwick, RI 02889.
2. I am employed by the Defendant Cumberland Farms, Inc. ("the Company") as Vice President of Human Resources, a position I have held since 1986.
3. On May 1, 1992, the Company filed for reorganization under Chapter 11 of the federal Bankruptcy Code. When the Company filed for bankruptcy, all wages and salaries of the Company's employees were "frozen."
4. In a memo to the Company's department heads dated October 1, 1992, I announced the lifting of the wage "freeze" and an across-the-board increase in wages and salaries of 3% for all employees of the Company. A true copy of that memo was marked at Udemba's Deposition as Exhibit 4, Bates # 017, and is attached to this Affidavit. Effective October 1, 1992, Oliver Udemba's salary was increased by 3%, from \$23,000 to \$23,689.64. He received an entirely separate

salary increase at the time of his promotion to Senior Project Manager, on August 30, 1993.

5. Oliver Udemba never asked to speak with me about his job, or any aspect of his job. He never communicated to me that he believed he was subjected to discrimination on account of his race. Colleen Cesarini worked for me in the Human Resources Department, from 1986 to December 29, 2000. Oliver never communicated to me that he was unsatisfied with Colleen's handling of anything. After Colleen left the Company, Oliver did not make a claim or report of discrimination on account of race to anyone else in the Human Resources Department.
6. The foregoing facts are based upon my personal knowledge and are true and accurate to the best of my knowledge and recollection.


FOSTER MACRIDES

Subscribed and sworn to before me this 3 day of May, 2006.


Notary Public
My commission expires: 10/8/2010



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05CV 11161 RGS
)	
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**AFFIDAVIT OF DEBRA DAMON
IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Debra Damon, being duly sworn, does aver as follows:

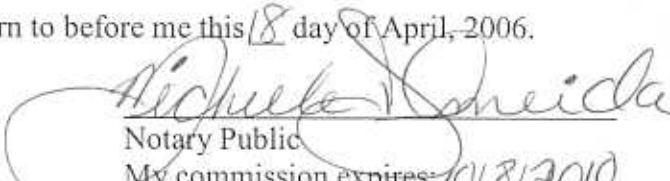
1. I reside at 406 North Avenue, Rockland, MA 02370.
2. I am employed by the Defendant Cumberland Farms, Inc. ("the Company") as Compensation and Operations Manager in the Human Resources department. I have held essentially the same position for over four years.
3. Attached to this affidavit is a copy of a document which I have been told was marked as an exhibit at a deposition in this case, Dep.Ex. 5, Bates # 077. The document displays an organizational chart which I developed in October of 2003. I created only the chart itself and do not know where the other information on this document originated.
4. In creating this organizational chart, I used a software program which organizes the information I enter on my desktop computer. The chart shows that there were eight (8) positions reporting directly to Emile Tayeh in October of 2003, in addition to his personal secretary: one of these positions ("Proj Engineer") was

open, and the others were held by Richie Etzold, Peter Lehtola, Muriel Tyler, Oliver Udemba, Angela Pimental, Donna Polleys and Jason Ruebeck. I did not have enough space to display Udemba, Pimental, Polleys, Ruebeck and the open position horizontally, on the same level as Tyler, Lehtola and Etzold, so I displayed them vertically and placed a box at the top of that column with the heading "Environmental Engineers." Doing it that way was my own idea, and my only reason for doing it this way was lack of space. Neither Emile Tayeh nor anybody else told me what information should be displayed on this chart, or how it should be displayed. I did not intend anything on this chart to signify that there was an open supervisory position between Emile Tayah and the project engineers.

5. The foregoing facts are based upon my personal knowledge and are true and accurate to the best of my knowledge and recollection.


DEBRA DAMON

Subscribed and sworn to before me this 18 day of April, 2006.


Notary Public
My commission expires: 10/8/2010



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,

Plaintiff,

v.

CUMBERLAND FARMS, INC.
AND EMILE C. TAYEH,

Defendant.

CIVIL ACTION NO: 05CV 11161 RGS


**AFFIDAVIT OF ANGELA PIMENTAL
IN SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Angela Pimental, being duly sworn, does aver as follows:

1. I reside at 62 Elva Road, Weymouth, MA 02191.
2. I was hired by the Defendant Cumberland Farms, Inc. ("the Company") on September 25, 2000.
3. I graduated from Bridgewater State College in August of 2000 with a Bachelor of Science degree in Environmental Geography, and a GPA of 3.9
4. The foregoing facts are based upon my personal knowledge and are true and accurate.


ANGELA PIMENTAL

Subscribed and sworn to before me this 4 day of May, 2006.


Notary Public

My commission expires: 10/8/2010



UDEMBA DEPOSITION	
EXHIBIT	<u>4</u>
<u>3-6-06</u> <u>pm</u>	

RESPONSE TO REQUEST NO. 2

0000001

Date: 8/21/03
To: Emile Tayeh, VP Environmental & Construction
From: Oliver Udemba, Senior Project Manager
RE: Job Title Clarification



I respectfully request that you kindly clarify my job title and employment situation. As you may recall, I had the chance to know for the first time, the contents of my "Employee Profile" sheet after my 2002 annual evaluation. Please see the attached sheet that I obtained from you.

In the profile, my job title is depicted as "Engineer". In the same profile, there is also a history of transfer effective date of "05251991" to corp "061 and Store "4019".

As you know I was employed by Cumberland Farms, Inc. on May 20, 1991 as "Project Manager". I have worked here in the Canton corporate office ever since I was employed. I was "promoted" to Senior Project Manager in 1993.

I am at a loss as to the meaning of these records since they are not consistent with my duties and functions here in the corporate office.

Thank you for your anticipated kind consideration of this matter

Sincerely,

Oliver Udemba

Senior Project Manager

CC: Foster Macrides, VP Human Resources

OU/ml

Tracy Watts - Oliver Udemba

Page

From: Tracy Watts
To: Tayeh, Emile
Subject: Oliver Udemba

Hello Emile!

A copy of Oliver's correspondence of 08/21/03 was directed to my attention. It is my understanding you were seeking information via e-mail, for discussion with Oliver.

It is recognized that Oliver is a Sr. Project Manager, and this is reflected within the Company's organizational charts. In regards to the Employee Profile record in which he is referring "job code 621/Engineer"; we assign job code to every employee. We do not have a different code for every existing job title. (Other persons with his same job title of Sr. Project Manager are also documented on the Employee Profile as Engineer)

In regards to 061/4019. This coding simply reflects the corporation and department or location where the employee is assigned. Further, the date of 05/25/91 is simply the week ending date he started working for the Company.

If you have any questions regarding the above, please let me know. I can be reached at extension 5556.

Tracy Watts
Employee Relations Supervisor

0000003

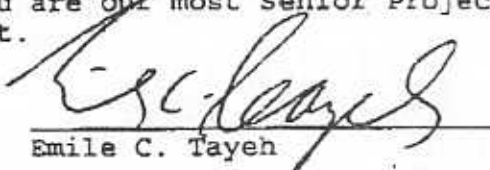
CUMBERLAND FARMS

MEMORANDUM

DATE: 08/29/03

TO: OLIVER UDEMBA, SENIOR PROJECT MANAGER
FROM: EMILE TAYEH, VP OF CONSTRUCTION/CHIEF OF ENVIRONMENTAL AFFAIRS
RE: JOB TITLE CLARIFICATION

In reference to your memo of August 21, 2003, attached is a response from our Human Resources Department clarifying the items you highlighted on your Employee Profile regarding job title, date of hire and transfer history. I would also like to state to you that you are our most Senior Project Manager within the Department.


Emile C. Tayeh

mat

cc: F. Macrides, VP HUMAN RESOURCES

0000004

ENVIRONMENTAL CONTROL	
VICE PRESIDENT	TATEH, EMILE
SECRETARY	ROGERS, STACEY
SUPERVISOR	HIGGINS, LORRAINE
SR PROJECT-MANAGER	HCCABE, KEVIN
PROJECT MANAGER	DOHILL, TIMOTHY
PROJECT MANAGER	GOLDEN, DERRICK
PROJECT MANAGER	LOVELLY, WILLIAM
PROJECT MANAGER	UDENRA, OLIVER
DRAFTSMAN	BERNIER, NORMAN
SPIILL COORDINATOR	CASSANI, JOHN
REIMBURSEMENT SPEC.	STEELE, LEM
UST COORDINATOR	FOLLETS, DENNA
	ENVIRONMENTAL
	GREGORY, JANICE
	3161, 3302, 6324
	3302
	3419
	3871
	3414
	3417
	3416
	3415
	3159
	3412
	3420
	3322
	3324, 3419
	3160

10/4/95

0000005

Smile

The above is information as contained

in the 1995 CFI phone directory.

It is my understanding that the

information received your approval

before publication. Whatever the

significance of it, I don't think

it is very nice. I am dismayed

that after 5 years in this department

it would appear that my welfare

is the least important.

Thank you
Dini

MEMORANDUM

OCTOBER 4, 1995

TO: WILLIAM SCHULTE, MANAGER, TELECOMMUNICATIONS
FROM: EMILE C. TAYEH, PE, VP OF ENVIRONMENTAL AFFAIRS
RE: TELEPHONE DIRECTORY

It has come to my attention that an administrative oversight has Oliver Udemba's title incorrectly listed in the recent issue of the Telephone Directory.

Please correct to show Mr. Udemba's title as Senior Project Manager.

0000006

From: Edward Polkay
To: Firing, Patricia
Date: 3/28/04 10:30AM
Subject: Company Automobiles

Please be advised that I have been involved in the company automobile program since 1979 and became fully responsible for the program in 1987. It has been always been our policy that non-field, non-VP personnel are only eligible for a company automobile if (1) approved by the divisional VP and (2) the immediate supervisor of the individual can document and/or justify a minimum of 15,000 business miles per year. - or - the Sr. VP acquires approval from the COO of the company if the mileage criteria can not be met.

Please contact me if you should have any further questions.

Edward Polkay
Fleet Manager
Cumberland Farms, Inc.
777 Dedham St.
Canton, MA 02021
781-828-4900 ext 5206
Fax 781-821-2439

EXHIBIT 12

0000012



CUMBERLAND FARMS, INC.

777 DEDHAM STREET, CANTON, MASSACHUSETTS 02021-9118

PHONE: 617-328-4900 TELEX: 710-348-0130 (CUMBERFARMS-CTON)

October 1, 1992

ALL DEPARTMENT HEADS:

I have attached a notice to All Employees from Lily H. Bencas, President. It will be distributed today, Thursday, October 1, 1992. The notice announces the lifting of the wage freeze, a general wage increase and more.

This memo describes the manner in which we will implement the general increase and the restoring of Performance Merit Increases. Your employees will have many questions so please review this memo carefully and be sure to seek our advice if you are in doubt about any aspect of the procedures outlined.

The general increase will be granted to all active, non-retail store/station, non-union employees. Employees compensated by rates other than hourly or salary wage will have such rates adjusted to reflect an increase of up to 3%. This increase will be implemented by the Human Resources Department. No action on the part of Supervisors will be necessary.

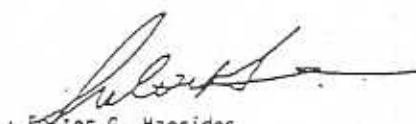
The procedure established to exit from the eighteen month Performance Merit Increase postponement is as follows:

Employees previously scheduled for merit increase consideration with April 1991 dates will be evaluated for merit increases effective the same date in October 1992. Likewise, previously scheduled employees from May of 1991 are re-scheduled to November 1992 and so on.

Following this next scheduled review, everyone will begin a new 12 month review cycle. The Human Resources Department will be forwarding you evaluation forms and schedules for all your employees. Please review the information and report any differences to Human Resources for correction, and then you should discuss the schedule with your employees. Retail Store and Station Managers will receive Merit Increase consideration effective January 1, 1993. New employees, those hired on October 1, 1992 or afterwards, will be reviewed on a twelve month cycle for Performance Merit Increases. They will not receive the 3% general increase.

All Plant, Bakery, Beverage, Warehouse, Maintenance and Non-union Terminal employees in job classifications previously granted step increases will begin receiving those step increases based on a continuation of timing in process prior to the freeze, that is, an employee due a step increase in April of 1991 will receive it in October of 1992, those due in May of 1991 will be received in November of 1992, etc.

Your recommendations for merit increases should follow these guidelines: 3.5%, 4.5% or 5.5% increases for performance evaluated as Good, Superior or Outstanding respectively. Overall department averages should be 4.5%. You will be measured against a 4.5% pool of dollars created from your departments current total compensation level. Remember, it will be important that your evaluations resemble a bell shaped normal distribution for you to stay within your 4.5% target.


Foster G. Macrides
Vice President Human Resources

0000017

UDEMBA
DEPOSITION

EXHIBIT 5

3-6-06 jmr

RESPONSE TO REQUEST NO. 5

0000018

Performance Appraisal (Exempt Personnel)

Name Oliver C. Udemba Soc. Sec. No.

Position Title Sr. Project Engineer Location Em

Type of Appraisal: Annual XX Promotion

Evaluation Period: From 8/30/94 To: 8/

Supervisor's Name Lorraine Higgins Supervisor's Title Office Supervisor

This evaluation should not have been done by Higgins.

Key Performance Factors	Performance Description	Performance Levels
Planning - Consider ability to conceptualize, formulate ideas, analyze problems, gather facts, ascertain causes, develop, alternative solutions, and predetermine a course of action.	Oliver has a superior ability to analyze problems, gather facts and develop adequate solutions to problems. Oliver has, however, shown a lessening in foreseeing/anticipating work and following through. Oliver needs to work on his ability to delegate.	1 2 <u>3</u> 4 5
Organizing - Consider ability to plan, organize and prioritize work activities for effective accomplishment of objectives.	Oliver needs to concentrate on formalizing a plan to prioritize his workload regularly and therefore enable him to work on daily and unplanned activities efficiently.	1 2 <u>3</u> 4 5
Managing/Directing - Consider ability to influence people to accomplish desired objectives, ensuring employee (subordinate) understanding through delegation, motivation, coordination and management of change.	Oliver has shown good managerial abilities. He needs to increase his motivational skills and coordination in the delegation of work.	1 2 3 <u>4</u> 5
Controlling - Consider ability to ensure progress toward objectives, according to plan, establish reporting system, develop performance standards for employees, measure results, take corrective action, reward and discipline.	Oliver has the ability to see work through to completion in light of the goals of the specific project. Improvement in timely followup on pending tasks is necessary.	1 2 <u>3</u> 4 5

Performance Level - Refer to Rating Definitions Chart

0000039

Performance Appraisal
(Exempt Personnel)

Page 2

Key Performance Factors	Performance Description	Performance Levels
Development - Consider ability to select, train, and develop subordinates, and to maintain adequate staffing levels for effective unit performance.	N/A	1 2 3 4 5
Communication - Consider effectiveness in communicating with associates, supervision, subordinates, and field management, and effectiveness in handling interpersonal relationships on various organization and/or job related issues.	Oliver has excellent written communications with vendors and authorities. Oliver has good verbal communication; however, there is some room for improvement.	1 2 3 4 5
Technical/Job Knowledge - Consider the understanding of the elements and technical requirements of the current job/position. Knowledge of the job gained through experience, general education and specialized training.	Oliver has an excellent technical and job knowledge based on his education and work experience. Oliver has worked to keep up to date on current regulations and requirements to ensure proper investigations are conducted.	1 2 3 4 5
Decision-Making/Judgement - Consider ability to utilize logical and sound reasoning necessary to respond to routine and unexpected problems in day-to-day operations.	Oliver has an excellent ability to utilize logical and sound reasoning to react and respond to routine and unexpected problems in a day to day operation.	1 2 3 4 5
List Additional Performance Factors	Oliver has a very good ability to analyze problems. Oliver has exhibited significant amounts of professional competence, maturity and ethical practices when managing projects overall.	1 2 3 4 5
Overall Performance Level Rating		1 2 3 4 5

0000040

Performance Appraisal
(Exempt Personnel)

Page 3

PERFORMANCE DEVELOPMENT PLAN

- 1) List and describe the employee's performance strengths (i.e. knowledge, skills, abilities, etc.).
- 2) List and describe the employee's performance factors needing improvement.

It is important that employees are informed and their personnel records reflect the consequences for failure to correct a serious weakness. Please indicate below the probable consequences for the employee's failure to correct improvement needs.

☐ Smaller or No Salary Increase ☐ No Consideration for Promotion ☐ Demotion* ☐ Termination*
*Consult Human Resources Department

- 3) Describe the action necessary to achieve improvement in specific areas.
- 4) Career Development Action Recommended - Indicate action to be taken to increase the employees capabilities for future growth. Include specific education programs, new job experiences, seminars, etc.
- 5) Career Development Plans - List specific development plans which both the employee and supervisor have agreed will occur during the next year (or rating period).

THIS PERFORMANCE APPRAISAL HAS BEEN DISCUSSED WITH ME

Employee's Signature

Date

Employee's Comments:

I report to the Vice President, Emile Torgue.
It is a major discrepancy to indicate I am a
(Office Supervisor) as my Supervisor.

Reviewer's Signature

Date

Second Level Reviewer's Signature

Date

0000041

Performance Appraisal
(Exempt Personnel)

Name Oliver C. Udemba Soc. Sec. No. 510-76-2990

Position Title Sr. Project Engineer Location Environmental Department

Type of Appraisal: Annual XX Promotion Other

Evaluation Period: From 8/30/94 To 8/30/95

Supervisor's Name Emile Tayeh Supervisor's Title Vice President

0000043

Key Performance Factors	Performance Description	Performance Levels
Planning - Consider ability to conceptualize, formulate ideas, analyze problems, gather facts, ascertain causes, develop, alternative solutions, and predetermine a course of action.	Oliver has a superior ability to analyze problems, gather facts and develop adequate solutions to problems. Oliver has, however, shown a lessening in foreseeing/anticipating work and following through. Oliver needs to work on his ability to delegate.	1 2 <u>3</u> 4 5
Organizing - Consider ability to plan, organize and prioritize work activities for effective accomplishment of objectives.	Oliver needs to concentrate on formalizing a plan to prioritize his workload regularly and therefore enable him to work on daily and unplanned activities efficiently.	1 2 <u>3</u> 4 5
Managing/Directing - Consider ability to influence people to accomplish desired objectives, ensuring employee (subordinate) understanding through delegation, motivation, coordination and management of change.	Oliver has shown good managerial abilities. He needs to increase his motivational skills and coordination in the delegation of work.	1 2 3 <u>4</u> 5
Controlling - Consider ability to ensure progress toward objectives, according to plan, establish reporting system, develop performance standards for employees, measure results, take corrective action, reward and discipline.	Oliver has the ability to see work through to completion in light of the goals of the specific project. Improvement in timely followup on pending tasks is necessary.	1 2 <u>3</u> 4 5

Performance Level - Refer to Rating Definitions Chart

Performance Appraisal
(Exempt Personnel)

Page 2

Key Performance Factors	Performance Description	Performance Levels
<u>Development</u> - Consider ability to select, train, and develop subordinates; and to maintain adequate staffing levels for effective unit performance.	N/A	1 2 3 4 5
<u>Communication</u> - Consider effectiveness in communicating with associates, supervision, subordinates, and field management, and effectiveness in handling interpersonal relationships on various organization and/or job related issues.	Oliver has excellent written communications with vendors and authorities. Oliver has good verbal communication; however, there is some room for improvement.	1 2 3 4 5
<u>Technical/Job Knowledge</u> - Consider the understanding of the elements and technical requirements of the current job/position. Knowledge of the job gained through experience, general education and specialized training.	Oliver has an excellent technical and job knowledge based on his education and work experience. Oliver has worked to keep up to date on current regulations and requirements to ensure proper investigations are conducted.	1 2 3 4 5
<u>Decision-Making/Judgement</u> - Consider ability to utilize logical and sound reasoning necessary to respond to routine and unexpected problems in day-to-day operations.	Oliver has an excellent ability to utilize logical and sound reasoning to react and respond to routine and unexpected problems in a day to day operation.	1 2 3 4 5
<u>List Additional Performance Factors</u>	Oliver has a very good ability to analyze problems. Oliver has exhibited significant amounts of professional competence, maturity and ethical practices when managing projects overall.	1 2 3 4 5
<u>Overall Performance Level Rating</u>		1 2 3 4 5

0000044

Performance Appraisal
(Exempt Personnel)

Page 3

PERFORMANCE DEVELOPMENT PLAN

- 1) List and describe the employee's performance strengths (i.e. knowledge, skills, abilities, etc.).
- 2) List and describe the employee's performance factors needing improvement.

It is important that employees are informed and their personnel records reflect the consequences for failure to correct a serious weakness. Please indicate below the probable consequences for the employee's failure to correct improvement needs.

☐ Smaller or No
Salary Increase

☐ No Consideration
for Promotion

☐ Demotion* ☐ Termination*
*Consult Human Resources Department

- 3) Describe the action necessary to achieve improvement in specific areas.

- 4) Career Development Action Recommended - Indicate action to be taken to increase the employees capabilities for future growth. Include specific education programs, new job experiences, seminars, etc.

- 5) Career Development Plans - List specific development plans which both the employee and supervisor have agreed will occur during the next year (or rating period).

THIS PERFORMANCE APPRAISAL HAS BEEN DISCUSSED WITH ME

Employee's Signature

Date

Employee's Comments:

I report to the Vice President, Emile Torgue.
It is a major discrepancy to indicate Lorraine Hign.
(Office Supervisor) as my Supervisor.

Reviewer's Signature

Date

Second Level Reviewer's Signature

Date

0000045

FILE

D O UDEMBA		OLIVER		08-30-93		06-13-93		ENGINEER		528.84		27499.68		40.00		S		H		N		2	
16 WESTLAND AVENUE #53		05-20-91		621		06-13-93		ENGINEER		528.84		27499.68		40.00		S		H		N		2	
P.O. BOX 946 ASTER STATION		12-03-54		621		06-13-93		ENGINEER		528.84		27499.68		40.00		S		H		N		2	
BOSTON MA 02123		12-03-54		621		06-13-93		ENGINEER		528.84		27499.68		40.00		S		H		N		2	

Salary	Job	Evaluation	History	Chronologically
06-13-93	528.84	2499.64	10.0 %	621 ENGINEER
12-13-92	480.77	1310.40	5.5 %	621 ENGINEER
10-01-92	455.57	690.04	3.0 %	621 ENGINEER
05-20-91	442.30			621 ENGINEER

25230
09/09/93
MC

052091
09/02/93
MC

621		ENGINEERS		10 BACHELORS		510-76-2990		TRANSFER TO		CORP		SOLD		MORT		EMP. NO. 13 & NO.		04		04		00001	
PAUL		OKATOR		FRIEND		621		621		621		621		621		621		621		621		621	
JOHN/JEN/ROBERT/FIDELIA		KIDS/WIFE		01		05-20-91		05-20-92		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91	
05-20-92		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91		05-20-91	

Senior Project Engineer (mgr)
375% merit
80% promotional

PERSONNEL COPY

EXHIBIT 1

"B"

0000071

0000074

"D"

PERSONNEL COPY

Page 02 of 02

0000076

Attention: Lionel Porter
Hrones & Garity

CUMBERLAND FARMS INC
CONSTRUCTION/ENVIRONMENTAL
10/07/2003

Dec 15, 1993

Emile Tayeh was promoted Vice President of Environmental Affairs



Cumberland Farms

Oliver O. Uuemba
Environmental Engineer

Cumberland Farms, Inc.
777 Dedham Street, Canton, MA 02021-9118
Tel: 617-828-4900 Ext. 03415 1-800-225-9702
Fax: 617-828-1497

EMILE TAYEH
VICE PRESIDENT CONSTRUCTION & CHIEF OF ENVIRONMENTAL AFFAIRS

LEANN BATES
EXECUTIVE SECRETARY

ENVIRONMENTAL ENGINEERS

OLIVER UUEMBA
SR PROJ ENGINEER

ANGELA PIMENTAL
SR PROJ ENGINEER

DONNA POLLEYS
PROJ ENGINEER/REIMBURSEMENTS

LOIS GRAHAM
REIMBURSEMENT SPECIALIST

OPEN
PROJ ENGINEER

JASON RUEBECK
PROJ ENGINEER

MURIEL TYLER
OFFICE MANAGER

SONIE JEAN
SR SECRETARY

LESLIE ALLEN
CONSTRUCTION COORD

JANE CAJUMICHAEL
EXPENSE COORDINATOR

CONNIE GREY
AP COORDINATOR

ZORAIDA ESTRELLA
AP COORDINATOR

MARY GIUSTI
AP COORDINATOR

PETER LEHTOLA
DIR CONSTRUCTION

JOHN BUGNER
CONST SUPV

N RUTHERN
PROJECT MGR

R THEROUX
PROJECT MGR

J SCHOLLES
PROJECT MGR

GAS CONSTRUCTION
MECHANICS

RICHIE ETZOLD
PROJECT MGR/MT

CAROLE MCGEE
SR SECRETARY

MELISSA GLIDDEN
SPILL COORDINATOR

DEBORAH IEBELLO
UST COORDINATOR

JANE CARMICHAEL
UST COORDINATOR

EXHIBIT 6

0000077

"G"

UDEMBA
DEPOSITION

EXHIBIT 7

jmw 3-6-06

RESPONSE TO REQUEST NO. 11

0000124

LAW OFFICES
HRONES AND GARRITY
LEWIS WHARF - BAY 232
BOSTON, MASSACHUSETTS 02110-3927

STEPHEN HRONES
JESSICA D. HEDGES

OF COUNSEL
DONALD HARWOOD
(ALSO MEMBER OF NEW YORK BAR)
JOSÉ LUIS SERPA

LIONEL PORTER
PARALEGAL December 16, 2003

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PAUL J. GARRITY
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TELEPHONE (603) 434-4106
FACSIMILE (603) 437-6714

Ann Giantonio, Supervisor
Equal Employment Opportunity Comm'n
John F Kennedy Federal Bldg, Rm 475
Government Center
Boston, MA 02203

Re: *Oliver Udemba v. Cumberland Farms, Inc., et. al., and Emile Tayeh*, EEOC No. _____

Dear Ms. Giantonio:

Enclosed please find Complaint and Notice Of Appearance in the above-referenced matter.
We are amenable to mediation.

If there are questions or comments, please contact Lionel Porter, who represents the this law firm in all proceedings.

Sincerely,


Stephen Hrones

LP/ams
Enclosures
cc: Oliver Udemba

0000125

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

☒ FEPA
☐ EEOC

CHARGE NUMBER

United States Equal Employment Opportunity Comm'n

State or local Agency, if any

and EEOC

NAME (Indicate Mr., Ms., Mrs.)

Oliver Udemba

HOME TELEPHONE (Include Area Code)
508/620-2963

STREET ADDRESS

CITY, STATE AND ZIP CODE

76A Beaver Park Road, Framingham, MA 01702

DATE OF BIRTH

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME

Cumberland Farms, Inc., et al, and

NUMBER OF EMPLOYEES, MEMBERS

TELEPHONE (Include Area Code)

STREET ADDRESS Emile Tayeh

CITY, STATE AND ZIP CODE

COUNTY

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☒ RACE ☒ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE
EARLIEST 1991 LATEST 12/2003

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

SEE EXHIBIT "A", attached hereto.

ADRYANN M. STRAUSS

Notary Public

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)
My Commission Expires February 11, 2005

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

Oliver Udemba
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Month, day and year) 12/16/2003

Date

Charging Party (Signature)

CERTIFICATE OF SERVICE

I, Stephen Hrones, hereby certify that on this 16th day of December, 2003, I have served a true and correct copy of the foregoing COMPLAINT OF OLIVER C UDEMBA, via United States First-Class Mail, postage prepaid, as follows: MCAD, One Ashburton Place, Ste 601, Boston, MA 02108.


Stephen Hrones

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORIGINAL

OLIVER UDEMBA,

Plaintiff

vs.

No. 05-11161-RGS

CUMBERLAND FARMS, INC.

and EMILE C. TAYEH,

Defendants

VOLUME: I

PAGES: 1-288

DEPOSITION of OLIVER UDEMBA, a witness called on behalf of the Defendants, pursuant to the Federal Rules of Civil Procedure, before Judith McGovern Williams, Certified Shorthand Reporter No. 130993, Registered Professional Reporter, Certified Realtime Reporter, Certified LiveNote Reporter, and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Seyfarth, Shaw, Two Seaport Lane, Boston, Massachusetts 02110, on Monday, March 6, 2006, commencing at 10:20 a.m.

1 A. I don't know if I do. I don't remember if
2 I do.

3 Q. Well, how many miles a year do you say
4 that you incur for these business trips
5 that you don't seek reimbursement from the
6 company for? Is it over a thousand miles
7 a year?

8 A. I don't have a number for you now. I
9 don't know.

10 Q. You have no idea if it is 5 miles or 500
11 miles?

12 A. No. Not right now. I don't have -- I
13 don't have an idea. I don't have a number
14 for you.

15 Q. Okay. Aside from the mileage, are there
16 any other expenses that you incur in the
17 course of your work for Cumberland Farms
18 that you do not get reimbursed for?

19 A. Well, I mean sometimes when you go to the
20 site you, you know, grab a bite to eat.
21 Sometimes I don't -- if I don't have, you
22 know, if sometimes I lose the receipt. If
23 I lose the receipt, you know, I --
24 sometimes I don't claim -- I don't -- I

1 what the -- the acronym, you know, stands
2 for.

3 Q. All right. I stand corrected.

4 How does one get licensed as an
5 LSP in Massachusetts?

6 A. An LSP, it is an engineer.

7 Q. No. I asked you how one gets licensed.

8 A. You go through a screening process to --
9 and then after that, you take a qualifying
10 exam.

11 Q. Okay. When did you get licensed as an LSP
12 in Massachusetts?

13 A. I believe it was in 1997.

14 Q. Okay. And after you obtained your LSP
15 license, you performed work for the Town
16 of Pelham as an LSP; correct?

17 A. Yes.

18 Q. Okay.

19 MR. MOSS: Mark this.
20 (One-page letter dated
21 September 20, 2003 to Mr. Nee
22 from Mr. Udemba and
23 attachments marked exhibit
24 number 18 for identification.)

1 A. Yes.

2 Q. And that is a seal which every Licensed
3 Site Professional is required to apply
4 before he files with the DEP; correct?

5 A. Yes.

6 MR. MOSS: Okay. Let's take a
7 break. Is five minutes okay?

8 MS. LIPEDE: That's fine.

9 (Recess taken at 2:40 p.m.)

10 (Recess ended at 2:52 p.m.)

11 BY MR. MOSS:

12 Q. Mr. Udemba, we have already had occasion
13 to refer to consultants, and the
14 consultants that we have referred to,
15 these are not employees of Cumberland
16 Farms, Inc.; is that right?

17 A. The consultants are not? Yes.

18 Q. That is correct?

19 A. Yes.

20 Q. You are an employee of Cumberland Farms,
21 Inc.; right?

22 A. Yes.

23 Q. These consultants are outside businesses
24 that Cumberland Farms hires as outside

1 contractors to perform work on
2 environmental projects?

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. And so they have their own employees?

7 A. Yes.

8 Q. And so they are not employees of
9 Cumberland Farms?

10 A. No.

11 Q. So when I use the word "consultants," do
12 you understand that I am referring to
13 those people?

14 A. Yes.

15 Q. Okay. And you mentioned one of them, ECS?

16 A. Yes.

17 Q. And that stands for?

18 A. Environmental Compliance Services, Inc.

19 Q. Okay. And can you name any others that
20 Cumberland Farms uses?

21 A. ENSR Corporation, E-N-S-R.

22 Q. E-N-S-R?

23 A. Yes. ENSR Corporation.

24 Q. And are there any others?

1 Q. Let me ask you something. The outside
2 consultants are actually doing the
3 physical work at the site?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. You don't do any of that?

8 A. No.

9 Q. So whether it is a question of taking
10 samples of the air, soil, and water or
11 testing the samples or excavating the site
12 to remove contaminated materials, that is
13 all done by outside consultants?

14 A. Yes.

15 Q. It is not done by you?

16 A. No.

17 Q. It is not done by any Cumberland Farms
18 employees?

19 A. No.

20 Q. Okay. All right. And has that been true
21 for as long as you have worked for
22 Cumberland Farms?

23 A. Yes.

24 Q. Okay. So since you were hired in 1991,

1 you have never done any of that work?

2 That has all been done by outside
3 consultants?

4 A. Yes.

5 Q. Correct?

6 A. Yes.

7 Q. Okay. So there is this relationship, I
8 guess I would call it, between Cumberland
9 Farms and the outside consultants, or
10 between you, Oliver Udemba, and the
11 outside consultants, that they do their
12 thing, and you do your thing?

13 MS. LIPEDE: Objection --

14 A. No.

15 MS. LIPEDE: -- as to form.

16 A. No.

17 Q. No?

18 A. No.

19 Q. All right. Maybe I am misconstruing it.
20 You don't do what the consultants do, and
21 they don't do what you do?

22 A. No. They don't do their own thing. You
23 said they do their own thing. They do --
24 whatever they do is predicated upon what I

1 Q. Okay. What has changed?

2 A. Well, since that --

3 MS. LIPEDE: Objection. Because
4 I'm not sure what time frame you are
5 referring to.

6 MR. MOSS: Well, I am talking
7 about since he started work for Cumberland
8 Farms in 1991.

9 MS. LIPEDE: Well --

10 Q. Let's go back five years. Has it changed
11 in the last five years?

12 A. No.

13 Q. Did it change in the five years before
14 that?

15 A. Well, it has changed -- no.

16 Q. That brings us back five years. And you
17 have worked for Cumberland Farms since
18 1991. So did the division of labor
19 between you and the outside consultants
20 change in the first five years that you
21 worked for Cumberland Farms?

22 A. No.

23 Q. Okay. So that's the point that I'm trying
24 to establish, that the division of labor

1 between you and the outside consultants
2 hasn't changed since you started work for
3 Cumberland Farms; is that correct?

4 A. Yes.

5 Q. Thank you. Tell me if you recognize these
6 names. These are people that work for
7 CEA. Steven Migridichian,
8 M-I-G-R-I-D-I-C-H-I-A-N?

9 A. Yes.

10 Q. Adam Last?

11 A. Yes.

12 Q. Scott Masse?

13 A. Yes.

14 Q. M-A-S-S-E?

15 A. Yes.

16 Q. For LBG, Dan Bezea, B-E-Z-E-A?

17 A. Yes.

18 Q. Rob Good?

19 A. Yes.

20 Q. John, Zbell, Z-B-E-L-L?

21 A. Yes.

22 Q. Lydia Key?

23 A. Yes.

24 Q. Matt Robbins?

1 A. Yes.

2 Q. So it wasn't necessary for you to have an
3 LSP license in order to serve that
4 function, was it?

5 A. No.

6 Q. And if you testified previously that you
7 were on call because --

8 MR. MOSS: Strike that. Let me
9 start that over.

10 Q. The firm of ECS that you identified, one
11 of the consultants, --

12 A. Yes.

13 Q. -- okay, do they employ any Licensed Site
14 Professionals?

15 A. Yes.

16 Q. And have they always employed Licensed
17 Site Professionals as long as they have
18 been doing work for Cumberland Farms?

19 A. No.

20 Q. When did they not have a Licensed Site
21 Professional?

22 A. When it wasn't the law to have a Licensed
23 Site Professional.

24 Q. And when did that law go into effect?

1 A. '93-'94.

2 Q. And ever since then has ECS employed
3 Licensed Site Professionals?

4 A. Yes.

5 Q. Okay. What about the other consultants
6 that you identified? Do they also employ
7 Licensed Site Professionals?

8 A. Yes.

9 Q. Okay. And so when Cumberland Farms
10 employs one of these outside consulting
11 firms to perform work of an environmental
12 nature, is it thereby utilizing the
13 Licensed Site Professional employed by
14 that consultant?

15 A. Say that again?

16 Q. When Cumberland Farms employs one of these
17 consulting firms, is it thereby employing
18 the Licensed Site Professional who works
19 for that consultant?

20 A. Yes.

21 Q. Can you take a look at exhibit 21 in your
22 pile, please?

23 (Witness complying.)

24 Q. Do you remember --

1 A. Yes.

2 Q. -- I asked you about the seal that appears
3 there?

4 A. Yes.

5 Q. Okay. The outside consultants that we
6 have been talking about, such as ECS and
7 CEA and LBG, they all have Licensed Site
8 Professionals who have their own seal;
9 correct?

10 A. Yes.

11 Q. And all of the reports that require an
12 LSP's seal on projects for Cumberland
13 Farms have been filed by the LSPs employed
14 by these consultants; am I right?

15 A. Employed by the LSPs of record of these
16 companies, yes.

17 Q. So, in other words, Cumberland Farms has
18 relied upon the LSPs employed by its
19 outside consultants to file all reports
20 with the Massachusetts Department of
21 Environmental Protection that require an
22 LSP's seal; correct?

23 A. Cumberland Farms has used outside LSPs as
24 the LSPs of record to file those reports.

1 Q. Okay. And I would like you to tell me in
2 what way Cumberland Farms is required by
3 the Commonwealth of Massachusetts to
4 employ an LSP as one of its own employees.

5 A. I didn't tell -- I didn't tell you that
6 the Commonwealth of Massachusetts required
7 Cumberland Farms to do so.

8 Q. In fact, there is no requirement as a
9 matter of law in Massachusetts that
10 Cumberland Farms employ its own LSP, is
11 there?

12 A. No.

13 MS. LIPEDE: Objection.

14 Q. I am sorry. Your answer is no?

15 A. Yes.

16 Q. Okay. Okay. In fact Cumberland Farms is
17 reimbursed by the Commonwealth of
18 Massachusetts for the services performed
19 by the LSPs that are employees of the
20 outside consultants; correct?

21 A. Cumberland Farms is reimbursed for --
22 Cumberland Farms participates in the
23 insurance program with the state, and they
24 get some degree of reimbursement for both

1 an LSP, could you perform that function
2 for Cumberland Farms in their place?

3 A. I am already performing the function of
4 the LSP.

5 Q. Well, I mean you haven't filed any reports
6 with the state on behalf of Cumberland
7 Farms with the seal of an LSP, have you?

8 A. No. I have not become -- I am not the LSP
9 of record.

10 Q. Okay. So thank you for correcting me. If
11 an outside consultant performing work for
12 Cumberland Farms did not have an LSP of
13 record on that site, could you perform
14 that function?

15 A. Yes.

16 Q. Okay. But you have not done so?

17 A. No.

18 Q. Okay.

19 MR. MOSS: Well, could you mark
20 that?

21 A. But I have been the supervising LSP as
22 required.

23 MS. LIPEDE: There is no
24 question before you.

Page 1

VOLUME: II

PAGES: 1 to 244

EXHIBITS: 34-36

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 05-11161 RGS

OLIVER UDEMBA,)
Plaintiff,)
)
v.)
)
CUMBERLAND FARMS, INC., and)
EMILE C. TAYEH,)
Defendants.)
)

CONTINUED DEPOSITION OF OLIVER
UDEMBA, called as a witness on behalf of the
Defendants, pursuant to the applicable
provisions of the Federal Rules of Civil
Procedure, before Jeanette N. Maracas,
Registered Professional Reporter and Notary
Public in and for the Commonwealth of
Massachusetts, at the Offices of Seyfarth
Shaw, LLP, Two Seaport Lane, Boston,
Massachusetts, on Tuesday, March 7, 2006,
commencing at 9:16 a.m.

ORIGINAL

ORIGINAL

ORIGINAL

10:04:47 1 renting a pizza shop, who is renting the
10:04:51 2 location where we have a public water supply
10:04:55 3 installation, received correspondence and
10:04:58 4 called the DEP. Then the DEP called me to --
10:05:03 5 Q. My question was what instruction did you
10:05:05 6 receive from the DEP?
10:05:06 7 A. To make sure that that facility that I
10:05:12 8 take care of, I get the information that
10:05:16 9 the lady have that should have been coming
10:05:18 10 to me, to make sure I retrieved the
10:05:22 11 information, and we discussed the --
10:05:23 12 Q. What instruction did you receive from the
10:05:25 13 DEP?
10:05:25 14 A. To make sure that I take actions for the
10:05:31 15 water supply facility to be in compliance,
10:05:33 16 to take care of compliance.
10:05:35 17 Q. What actions did you take in order to carry
10:05:37 18 out that instruction?
10:05:40 19 A. I talked to the lady and asked her to forward
10:05:45 20 the information that the DEP forwarded to
10:05:47 21 her to me.
10:05:48 22 Q. So which lady was that?
10:05:51 23 A. It's the lady that is renting the pizza
10:05:57 24 shop in one of our supermarkets. I don't

10:50:34 1 Q. Mr. Udemba, are you now saying that Mr. Tayeh
10:50:37 2 said something in response to your analogy
10:50:39 3 about Colin Powell?

10:50:41 4 A. I'm saying I don't recollect all the
10:50:45 5 conversations that went on.

10:50:46 6 Q. Can you answer my question, sir, yes or no,
10:50:49 7 are you now saying under oath that Mr. Tayeh
10:50:53 8 said something in response to your analogy
10:50:55 9 about Colin Powell?

10:50:56 10 A. I'm saying that I don't remember everything
10:50:59 11 that --

10:51:00 12 Q. Just answer my question. Are you saying
10:51:01 13 that he made a response to your analogy
10:51:03 14 about Colin Powell? Yes or no.

10:51:05 15 A. I'm not saying that.

10:51:07 16 MS. LIPEDE: It's been asked and
10:51:08 17 answered about three times.

10:51:11 18 A. I'm not saying that.

10:51:12 19 MS. LIPEDE: He's saying he can't
10:51:14 20 recall.

10:51:14 21 A. I can't recall whether he said anything or
10:51:15 22 not.

10:51:16 23 Q. You can't recall whether he said anything
10:51:18 24 or not?

10:51:19 1 A. Yes, I told you that.

10:51:20 2 Q. So the best of your recollection is that he

10:51:24 3 said nothing?

10:51:25 4 MS. LIPEDE: Objection.

10:51:25 5 A. No, I don't recall whether he said anything

10:51:27 6 or not.

10:51:27 7 Q. Okay. Now, the position that you were asking

10:51:55 8 Mr. Tayeh about was the position that had

10:52:01 9 previously been held by Andrew Beland; is

10:52:03 10 that correct?

10:52:03 11 A. Yes.

10:52:08 12 Q. What was Mr. Beland's position?

10:52:12 13 A. The position, he was supervising project

10:52:18 14 manager.

10:52:20 15 Q. Was he your supervisor?

10:52:21 16 A. Yes.

10:52:23 17 Q. And he left that position --

10:52:26 18 A. Yes.

10:52:27 19 Q. -- in December of 1994?

10:52:30 20 A. Yes, or thereabouts, yes.

10:52:34 21 Q. That's the position that you say that you

10:52:38 22 approached Mr. Tayeh about filling?

10:52:40 23 A. Yes.

10:52:42 24 Q. Was anybody else given that position when

10:52:46 1 Mr. Beland left?

10:52:50 2 A. No.

10:52:53 3 Q. Nobody? It was never filled?

10:52:56 4 A. Well --

10:52:58 5 Q. It's a yes or no question, Mr. Udemba.

10:53:01 6 MS. LIPEDE: Let him answer. You

10:53:04 7 don't know whether it's yes or whether it

10:53:05 8 isn't.

10:53:06 9 Q. Was it filled or wasn't it?

10:53:09 10 A. I don't know if it was filled or not.

10:53:09 11 Q. You don't know?

10:53:10 12 A. No.

10:53:11 13 Q. Well, who filled it?

10:53:14 14 A. I don't know.

10:53:25 15 Q. Now, you attribute to Mr. Tayeh the remark,

10:53:30 16 quote, "the construction and other

10:53:32 17 departments of the company would not accept

10:53:34 18 you," close quote, and then you go on to

10:53:36 19 say in Paragraph 23, "Mr. Tayeh made these

10:53:39 20 comments because Mr. Udemba is a black

10:53:43 21 African and the construction department

10:53:45 22 and other departments at the time were

10:53:47 23 predominantly white." Mr. Tayeh did not say

10:53:50 24 that, though, correct? He didn't say it's

10:53:54	1	because you're a black African?
10:53:58	2	A. He implied it.
10:53:59	3	Q. He didn't say -- Mr. Udemba, please answer
10:54:01	4	my question.
10:54:04	5	A. No, he didn't say it. He didn't use those
10:54:07	6	words exactly, no.
10:54:09	7	Q. He didn't say anything about you being a
10:54:12	8	black African, did he?
10:54:14	9	MS. LIPEDE: Objection.
10:54:18	10	A. No.
10:54:20	11	Q. He didn't say anything about the construction
10:54:22	12	and other departments being predominantly
10:54:25	13	white, did he?
10:54:26	14	A. No.
10:54:27	15	Q. He didn't make any reference to race, white
10:54:31	16	or black, in that conversation, did he?
10:54:33	17	A. No.
10:54:41	18	Q. Now, in Paragraphs 23 and 24, you say that
10:55:00	19	Mr. Tayeh made that comment that the
10:55:04	20	construction and other departments of the
10:55:05	21	company would not accept you because you
10:55:09	22	are a black African and the other departments
10:55:11	23	were predominantly white. Do you have some
10:55:23	24	evidence to support that other than what's

10:55:27 1 in your complaint?

10:55:32 2 A. Do I have some evidence to support the
10:55:37 3 statement?

10:55:38 4 Q. Yes, your conclusion. You say Mr. Tayeh
10:55:41 5 made these comments because Mr. Udemba is a
10:55:44 6 black African and the construction and
10:55:46 7 other departments at the time were
10:55:49 8 predominantly white. My question is, do
10:55:51 9 you have any evidence to support that
10:55:54 10 conclusion that it was race? Let me break
10:56:02 11 it down for you, Mr. Udemba.

10:56:06 12 Did you ever receive something in
10:56:08 13 writing from Mr. Tayeh saying that because
10:56:16 14 Oliver Udemba is a black African, he's not
10:56:20 15 going to get this job?

10:56:22 16 A. No.

10:56:23 17 Q. Did you ever receive anything from Mr. Tayeh
10:56:28 18 in writing making reference to your race?

10:56:37 19 A. No.

10:56:37 20 Q. Did you ever see a document from anybody in
10:56:44 21 the company that said Oliver Udemba is not
10:56:50 22 going to get a job because he's a black
10:56:53 23 African?

10:56:54 24 A. No.

10:56:54 1 Q. Did you ever see a document from anybody in
10:56:58 2 the company making reference to your race?
10:57:13 3 A. There are documents in the company that
10:57:17 4 make references to race.
10:57:20 5 Q. Like what? You mean their equal employment
10:57:24 6 opportunity policy?
10:57:26 7 A. No. It's like --
10:57:29 8 Q. What document are you referring to?
10:57:32 9 A. Well, in the policy and procedure of the
10:57:40 10 company.
10:57:40 11 Q. Go ahead. Tell me more.
10:57:43 12 A. They classify, you know.
10:57:50 13 MR. MOSS: Let's go off the record
10:57:51 14 for a moment.
10:58:30 15 (Discussion off the record)
10:58:30 16 MR. MOSS: Let's go back on the
10:58:31 17 record.
10:58:31 18 Q. Mr. Udemba, have you seen any documents at
10:58:37 19 Cumberland Farms that characterize a person's
10:58:41 20 race as a factor in their employment?
10:58:44 21 A. No.
10:58:46 22 Q. Have you seen any documents at Cumberland
10:58:50 23 Farms that say or suggest that a person's
10:58:56 24 race will affect their ability to receive

10:58:59	1	a promotion?
10:59:00	2	A. No.
10:59:01	3	Q. Or how they're compensated?
10:59:03	4	A. No.
10:59:04	5	Q. Or how they're treated?
10:59:06	6	A. No.
10:59:06	7	Q. Do you have any reason to believe that there
10:59:09	8	is such a document in which Cumberland Farms
10:59:15	9	has said that race would be a factor in how
10:59:18	10	its employees are treated?
10:59:20	11	A. I don't know.
10:59:22	12	Q. Do you have any reason to believe that
10:59:23	13	there is such a document?
10:59:27	14	A. I don't know.
10:59:28	15	Q. Do you know what I mean by "reason to
10:59:34	16	believe"?
10:59:34	17	MS. LIPEDE: Objection.
10:59:42	18	A. My answer would be that I don't know.
10:59:45	19	Q. Okay. Do you have any reason to believe
10:59:50	20	that there has ever been in the time that
10:59:53	21	you've been employed by Cumberland Farms a
10:59:55	22	document that says or suggests that an
10:59:59	23	employee's race would be a factor in how
11:00:01	24	he or she is treated?

11:00:03 1 A. I don't know.

11:00:04 2 MS. LIPEDE: Objection.

11:00:09 3 Q. Has anybody at Cumberland Farms in the
11:00:13 4 entire time that you've worked there ever
11:00:15 5 said or suggested to you that your race
11:00:19 6 would be a factor in how you were treated
11:00:21 7 at Cumberland Farms?

11:00:25 8 A. The statement that is in Paragraph 23,
11:00:32 9 that's my understanding of that.

11:00:35 10 Q. Is that the only statement made by anybody
11:00:38 11 at Cumberland Farms that you would attribute
11:00:42 12 to your race?

11:00:43 13 A. Yes.

11:00:48 14 Q. Is there anything else you can point to
11:00:51 15 to support your conclusion that you were
11:00:55 16 denied promotion to Mr. Beland's position
11:00:58 17 because of your race other than what's in
11:01:00 18 Paragraphs 23 and 24?

11:01:07 19 A. Well, in terms of documents?

11:01:12 20 Q. Any evidence at all.

11:01:18 21 A. Well, the way I was treated in the
11:01:22 22 department.

11:01:23 23 Q. As set forth in the other paragraphs in your
11:01:30 24 complaint? Is there anything other than

11:02:43 1 relying upon, would you have set it forth
11:02:46 2 in your answers to the company's
11:02:49 3 interrogatories?
11:02:49 4 A. Yes.
11:02:50 5 Q. Thank you. Now, based upon the testimony
11:02:58 6 that you have just given, Mr. Udemba, am I
11:03:02 7 correct that you never heard Mr. Tayeh use a
11:03:07 8 racial epithet?
11:03:09 9 A. No.
11:03:11 10 Q. Do you know what I mean by a racial epithet?
11:03:14 11 A. Yes.
11:03:15 12 Q. I don't want to offend anybody's
11:03:19 13 sensibilities, but I'm going to be explicit
11:03:20 14 here so there's no disagreement on the
11:03:23 15 record. Have you ever heard Mr. Tayeh use
11:03:27 16 the expression "nigger"?
11:03:41 17 A. No.
11:03:41 18 Q. Have you ever heard him use any other
11:03:44 19 expression to describe people who are African
11:03:49 20 or African American?
11:03:51 21 A. Excuse me?
11:03:53 22 Q. Have you ever heard Mr. Tayeh use any other
11:03:56 23 expression to describe people who are African
11:03:58 24 or African American?

11:03:59 1 A. No.

11:04:04 2 Q. To the best of your knowledge, has Mr. Tayeh

11:04:09 3 ever used either the expression "nigger" or

11:04:14 4 any other expression that would be

11:04:18 5 disparaging of people who are African or

11:04:20 6 African American?

11:04:22 7 A. I don't know.

11:04:23 8 Q. Have you ever heard anybody say they heard

11:04:26 9 Mr. Tayeh use such an expression?

11:04:27 10 A. No.

11:04:30 11 Q. Do you have any knowledge that he ever did

11:04:32 12 use such an expression?

11:04:34 13 A. No.

11:04:36 14 Q. Is there anybody else in the environmental

11:04:40 15 affairs department who has used such an

11:04:42 16 expression?

11:04:42 17 A. No.

11:04:44 18 Q. Is there anybody else that you know of at

11:04:47 19 Cumberland Farms who has used such an

11:04:49 20 expression?

11:04:50 21 A. Not that I can tell.

11:05:35 22 Q. Now, take a look in Paragraph 26 of your

11:05:57 23 complaint and read that over to yourself

11:06:00 24 silently, please.

11:06:00 1 A. (Witness examines document) Yes.

11:06:13 2 Q. In Paragraph 26 you allege Ms. Cessarini

11:06:19 3 immediately arranged a meeting between

11:06:20 4 Mr. Udemba and Mr. Tayeh. Mr. Udemba

11:06:24 5 reiterated Mr. Tayeh's racially-charged

11:06:29 6 comments. The expression, "racially-charged

11:06:34 7 comments" in Paragraph 26, does that refer

11:06:35 8 to the exchange that is reflected in

11:06:40 9 Paragraphs 23 and 24 of the complaint?

11:06:42 10 A. Yes.

11:06:43 11 Q. So when you say "racially-charged comments,"

11:06:46 12 you mean the comments that are in quotes

11:06:48 13 in Paragraphs 23 and 24?

11:06:50 14 A. Yes.

11:06:51 15 Q. And nothing else?

11:06:53 16 A. No.

11:06:57 17 Q. So the racially-charged comment that you're

11:07:00 18 referring to in Paragraph 26 is the analogy

11:07:04 19 to Colin Powell that you said to Mr. Tayeh,

11:07:09 20 correct?

11:07:10 21 MS. LIPEDE: Objection.

11:07:10 22 A. Yes -- no.

11:07:15 23 Q. Yes or no?

11:07:24 24 A. It wasn't the -- the totality of that

11:07:28 1 statement is referring to both statements
11:07:32 2 what he said; and to make sure that I
11:07:35 3 understand where he's coming from, I gave
11:07:37 4 the analogy of Colin Powell and he did not
11:07:40 5 refute it, meaning that he understood what
11:07:42 6 he said in the totality of that statement.
11:07:47 7 Q. In Paragraph 26 when you refer to
11:07:49 8 racially-charged comments, you're referring
11:07:50 9 to the two comments that are in quotation
11:07:53 10 marks in Paragraphs 23 and 24; is that
11:07:55 11 correct?
11:07:55 12 A. Yes, yes.
11:07:56 13 Q. And nothing else?
11:07:57 14 A. No.
11:07:58 15 Q. Thank you. Now, why did you go to Colleen
11:08:09 16 Cessarini with this?
11:08:11 17 A. Because it was clearly I was discriminated
11:08:17 18 against.
11:08:17 19 Q. Why her?
11:08:18 20 A. Because she was the manager of human
11:08:22 21 resources at the time, and she also was one
11:08:30 22 of the persons that interviewed me when I
11:08:33 23 joined the company.
11:08:34 24 Q. Is there a human resources department at

11:08:36 1 Cumberland Farms?

11:08:37 2 A. Yes.

11:08:38 3 Q. Has there been a human resources department

11:08:40 4 at Cumberland Farms since the day that you

11:08:43 5 first came to work there?

11:08:44 6 A. Yes.

11:08:44 7 Q. Was Colleen Cessarini the head of the human

11:08:48 8 resources department at Cumberland Farms?

11:08:49 9 A. No.

11:08:50 10 Q. Did she report to somebody over her?

11:08:52 11 A. Yes.

11:08:52 12 Q. And who was that?

11:08:55 13 A. Foster Macrides.

11:08:58 14 Q. Spelled M A C R I D E S. Mr. Macrides is

11:09:05 15 now the vice president of human resources;

11:09:07 16 is that right?

11:09:08 17 A. Yes, yes.

11:09:09 18 Q. And was he the top official in the department

11:09:14 19 of human resources when you were hired at

11:09:20 20 Cumberland Farms?

11:09:20 21 A. I don't know. At the time I was hired, I

11:09:23 22 don't know.

11:09:23 23 Q. In 1994 when you had this conversation with

11:09:28 24 Mr. Tayeh, was Foster Macrides the head of

11:09:34 1 the human resources department?

11:09:36 2 A. I believe so.

11:09:36 3 Q. Have you ever spoken to Mr. Macrides about

11:09:41 4 your treatment at the company?

11:09:41 5 A. No.

11:09:43 6 Q. Have you ever spoken to anybody else in

11:09:45 7 the human resources department about your

11:09:48 8 treatment at the company other than Colleen

11:09:51 9 Cessarini?

11:09:51 10 A. No.

11:09:53 11 Q. And did you ever speak to Ms. Cessarini

11:09:58 12 other than the occasion described in

11:10:02 13 Paragraphs 25 and 26 of the complaint?

11:10:05 14 A. No.

11:10:05 15 Q. That's the only time?

11:10:06 16 A. Yes.

11:10:07 17 Q. So that's the only time you ever asked

11:10:10 18 anybody in the human resources department

11:10:12 19 to consider the way you were being treated

11:10:14 20 by the company?

11:10:16 21 A. Yes.

11:10:19 22 Q. Were you satisfied with Ms. Cessarini's

11:10:24 23 handling of the matter on the occasion

11:10:25 24 described in Paragraphs 25 and 26?

11:10:27 1 A. No.

11:10:30 2 Q. In what way were you unsatisfied with

11:10:32 3 Ms. Cessarini's handling of the matter?

11:10:35 4 A. I did not hear anything back from -- it was

11:10:39 5 in limbo. I was expecting to hear something

11:10:44 6 from somebody, but I didn't hear any, didn't

11:10:47 7 get any feedback.

11:10:50 8 Q. Well, but you didn't go back to her and say

11:10:54 9 "what's happening with this"?

11:10:57 10 A. No.

11:10:57 11 Q. And you didn't go to anybody else in the

11:10:59 12 human resources department?

11:11:00 13 A. No.

11:11:01 14 Q. Why not?

11:11:03 15 A. I was busy. I was very busy. I have a lot

11:11:06 16 of work to do. I was busy.

11:11:08 17 Q. Do you have any reason to think that Ms.

11:11:10 18 Cessarini would refuse to meet with you

11:11:12 19 again?

11:11:12 20 A. No.

11:11:13 21 Q. Did you have any reason to think that

11:11:14 22 Foster Macrides would refuse to meet with

11:11:17 23 you?

11:11:17 24 A. No.

11:11:17 1 Q. Did you have any reason to think that
11:11:19 2 Ms. Cessarini was biased against Africans or
11:11:23 3 African Americans?
11:11:24 4 A. No.
11:11:24 5 Q. Or that Foster Macrides was biased against
11:11:29 6 Africans or African Americans?
11:11:31 7 A. I have no reason to believe so.
11:11:32 8 Q. At any time?
11:11:33 9 A. No.
11:11:35 10 Q. Did you understand that if you were unhappy
11:11:38 11 with Ms. Cessarini's handling of your
11:11:41 12 concern, that you could have gone to Foster
11:11:44 13 Macrides since he was her superior?
11:11:47 14 A. Yes.
11:11:49 15 Q. But you didn't do that?
11:11:49 16 A. No.
11:11:51 17 Q. So when you did not hear back from Ms.
11:11:56 18 Cessarini and you were not satisfied with
11:11:58 19 the outcome of that, you were convinced at
11:12:04 20 that time that you did not get the position
11:12:06 21 because of your race?
11:12:07 22 A. Yes.
11:12:10 23 Q. And did you file a complaint with the
24 Massachusetts Commission Against

11:12:17 1 Discrimination or with the Equal Employment
11:12:23 2 Opportunity Commission in 1994 or 1995?
11:12:26 3 A. No.
11:12:27 4 Q. Why not?
11:12:28 5 A. Because I thought the matter was still
11:12:33 6 ongoing. The matter was still open. I
11:12:36 7 haven't received any instruction from human
11:12:41 8 resources to do anything otherwise.
11:12:45 9 Q. So you didn't hear anything from human
11:12:47 10 resources at Cumberland Farms and you were
11:12:50 11 not satisfied with the outcome and you
11:12:52 12 thought that you had been denied a promotion
11:12:56 13 to Andy Beland's position because of your
11:12:59 14 race?
11:12:59 15 A. Yes.
11:13:00 16 Q. But you did not file a complaint with the
17 Massachusetts Commission Against
11:13:05 18 Discrimination or the EEOC --
11:13:06 19 A. Yes.
11:13:08 20 Q. -- in 1994?
11:13:10 21 A. Yes.
11:13:10 22 Q. And 1995?
11:13:12 23 A. Yes.
11:13:13 24 Q. Or in 1996?

11:13:13 1 A. Yes.

11:13:14 2 Q. Or in 1997?

11:13:15 3 A. Yes.

11:13:16 4 Q. Or in 1998?

11:13:17 5 A. Yes.

11:13:18 6 Q. Or in 1999? During that entire period of

11:13:25 7 time, did you remain convinced that you had

11:13:27 8 been denied the promotion to Andy Beland's

11:13:30 9 position because of your race?

11:13:31 10 A. Yes.

11:13:31 11 Q. And during that entire period of time, you

11:13:34 12 were unsatisfied with the outcome from your

11:13:39 13 conversation with Colleen Cessarini?

11:13:40 14 A. Yes.

11:13:41 15 Q. During that entire time period of time, you

11:13:43 16 took no action to express your continuing

11:13:48 17 concern to the human resources department?

11:13:50 18 A. I tried to -- at one point I tried to talk

11:13:53 19 to Harry Brenner.

20 Q. Harry Brenner?

21 A. Yeah.

11:13:56 22 Q. When was that?

11:13:57 23 A. I don't remember exactly when. There was a

11:14:00 24 time I called him.

11:31:24 1 MS. LIPEDE: My objection to your
11:31:26 2 question is that it was so convoluted.
11:31:30 3 That's my objection to the question.
11:31:32 4 MR. MOSS: All right. I'll have
11:31:33 5 another go at it.
11:31:36 6 Q. Wait till you hear the question, Mr. Udemba.
11:31:58 7 I asked you is there any other position at
11:32:06 8 Cumberland Farms that you claim you should
11:32:08 9 have been promoted to other than the position
11:32:09 10 that you describe in Paragraph 23, and you
11:32:12 11 said yes, and I said what is that, and you
11:32:15 12 said I should have been promoted to chief
11:32:17 13 of environmental affairs. And I asked you
11:32:20 14 who held that position, and ultimately you
11:32:25 15 said it wasn't created because Emile was
11:32:26 16 the vice president of environmental affairs.
11:32:30 17 So what I gather from your testimony, sir,
11:32:33 18 is that you're saying that when the company
11:32:36 19 made Emile Tayeh the vice president of
11:32:39 20 construction, it should have promoted you
11:32:41 21 to the position that he held as the vice
11:32:44 22 president of environmental affairs. Is that
11:32:46 23 your claim?
11:32:46 24 A. Yes.

11:32:46	1	Q. Okay. And I asked you who made that decision
11:32:52	2	to keep him in that position instead of
11:32:55	3	giving it to you, and you said you didn't
11:32:56	4	know?
11:32:57	5	A. The company did.
11:32:58	6	Q. Who in the company?
11:32:59	7	A. I don't know.
11:32:59	8	Q. You don't know?
11:33:00	9	A. No.
11:33:00	10	Q. So what makes you say that they did that
11:33:04	11	because of your race?
11:33:07	12	A. Because they have not promoted me.
11:33:10	13	Q. Well, do you have any basis for concluding
11:33:16	14	that they didn't give you that position
11:33:17	15	because of your race?
11:33:18	16	A. Yes.
11:33:19	17	Q. What is the basis?
11:33:20	18	A. Because they treating other people
11:33:23	19	differently. They promoting other people
11:33:27	20	who are white. They have promotions and
11:33:34	21	Emile is considered white, he's white so
11:33:36	22	he gets promotions and I don't get any
11:33:39	23	promotion whatsoever. So that is an
11:33:42	24	indication of racial discrimination, given

11:38:44 1 A. I don't know if he is or not.

11:38:51 2 Q. And you did not file a complaint with the
11:38:56 3 EEOC or the MCAD about this issue, this
11:39:00 4 promotion to vice president, the fact that
11:39:03 5 you were not promoted to vice president of
11:39:06 6 environmental affairs in 1999, 2000, 2001
11:39:09 7 and 2002, did you?

11:39:10 8 A. No.

11:40:33 9 Q. Now, in your complaint you say that you were
11:40:36 10 hired by Colleen Cessarini and Emile Tayeh;
11:40:42 11 is that right?

11:40:42 12 A. Yes. I was interviewed by them, yes.

11:40:44 13 Q. Were you interviewed by anybody else?

11:40:50 14 A. No.

11:40:51 15 Q. And this was in 1991?

11:40:53 16 A. Yes.

11:40:58 17 Q. Do you recall what each of them said when
11:41:00 18 they interviewed you?

11:41:05 19 A. I first interviewed with Colleen Cessarini
11:41:07 20 and she told me that my qualifications were
11:41:13 21 impressive, and she also mentioned that I
11:41:17 22 coming into the department, she also
11:41:25 23 mentioned that I had more experience than,
11:41:29 24 you know, even Emile himself and that since

12:13:19 1 Q. Mr. Udemba, let me ask you another question.
12:13:22 2 Can you take a look at Paragraph 15 of your
12:13:37 3 complaint. In Paragraph 15, sir, you said,
12:13:41 4 "upon his appointment as vice president of
12:13:44 5 environmental affairs, Mr. Tayeh promoted
12:13:48 6 Andrew Beland, who is white, to the position
12:13:50 7 of supervising project manager."

12:13:53 8 Mr. Udemba, is it your contention
12:13:56 9 that the promotion of Andrew Beland was based
12:14:00 10 upon his race?

12:14:01 11 A. I don't know.

12:14:03 12 Q. Is it your contention that it's based upon
12:14:04 13 his race or not?

12:14:06 14 A. I don't know. I don't know. I'm not saying
12:14:10 15 that.

12:14:10 16 Q. Okay. Are you saying that you should have
12:14:12 17 been appointed to that position instead of
12:14:14 18 Andrew Beland?

12:14:15 19 A. I'm not saying that.

12:14:16 20 Q. Okay. Thank you. The other members of
12:14:21 21 the environmental affairs department that
12:14:25 22 we have talked about, we talked about maybe
12:14:32 23 a dozen times, how would you characterize
12:14:32 24 your relationship with them?

01:08:02 1 memo?

01:08:02 2 A. No, no.

01:08:06 3 Q. Now, the memo dated October 1st, 1992, as

01:08:12 4 described in Paragraph 20 of the complaint,

01:08:14 5 was signed by Foster Macrides, the vice

01:08:19 6 president of human resources; is that right?

01:08:21 7 A. Yes.

01:08:23 8 Q. And I think you produced a copy of that memo.

01:08:55 9 MS. LIPEDE: It's No. 17.

01:09:01 10 MR. MOSS: Thank you.

01:09:08 11 Q. This would be in Exhibit 4, document Bates

01:09:13 12 stamped document No. 17. Do you have that

01:09:15 13 in front of you?

01:09:23 14 A. Yes.

01:09:26 15 Q. That's the memo that you're referring to in

01:09:29 16 Paragraph 20 of your complaint?

01:09:30 17 A. Yes.

01:09:33 18 Q. Is there anything in this document,

01:09:38 19 Exhibit 4, Bates stamped No. 17, that refers

01:09:41 20 to the increase that you received in May

01:09:43 21 of 1993?

01:09:52 22 A. Specifically, no.

01:09:53 23 Q. How do you know that this memo dated

01:10:00 24 October 1st, 1992 has anything to do with

01:10:01 1 the increase you received in May of 1993?

01:10:07 2 A. Because they happened at the same time that

01:10:23 3 this, that this memo was implemented.

01:10:27 4 Q. Mr. Udemba, I don't understand. This

01:10:29 5 document dated October 1st, 1992 is eight

01:10:39 6 months before the wage increase you referred

01:10:42 7 to in Paragraph 17 of your complaint.

01:10:46 8 What's the connection between this memo of

01:10:52 9 October 1st, 1992 and the pay increase that

01:10:53 10 you say you received in May of 1993?

01:10:58 11 A. Actually, that it happened, this wage,

01:11:06 12 this announcement, already the pay increase

01:11:14 13 followed this announcement. That's my

01:11:16 14 connection.

01:11:16 15 Q. By eight months?

01:11:17 16 A. Okay. Yes.

01:11:20 17 Q. Did anybody ever say to you this memo of

01:11:26 18 October 1st, 1992 has some connection to the

01:11:27 19 pay increase you received in May of 1993?

01:11:31 20 A. No.

01:11:33 21 Q. Do you have any other basis for assuming

01:11:35 22 that this memo of October 1st, 1992 is

01:11:40 23 somehow connected to the pay increase you

01:11:42 24 received in May of 1993?

01:11:44	1	A. No.
01:11:53	2	Q. Mr. Udemba, my records show that you received
01:11:58	3	a pay increase on October 1st, 1992. Do you
01:12:03	4	recall that?
01:12:05	5	A. No.
01:12:06	6	Q. Do you have any reason to doubt that?
01:12:13	7	A. I don't have any recollection of that.
01:12:14	8	Q. Do you have any reason to doubt that?
01:12:18	9	A. I don't know.
01:12:20	10	Q. My records also show you received another
01:12:24	11	pay increase on December 13, 1992. Do you
01:12:27	12	disagree with that?
01:12:29	13	A. I don't know.
01:12:32	14	Q. Either you do or don't disagree with it.
01:12:37	15	A. I can't disagree with what I don't have
01:12:39	16	any recollection of, what I don't know. I
01:12:45	17	can't disagree with what I don't know.
01:12:46	18	Q. My records also show you received a pay
01:12:48	19	increase on June 13, 2003. Do you disagree
01:12:52	20	with that, sir?
01:12:53	21	A. Pay increase in 2003?
01:12:55	22	Q. June 13, 2003.
01:13:04	23	A. I don't know because I wouldn't know why I
01:13:08	24	would receive pay increase in June. I don't

01:20:53 1 A. Yes.

01:20:54 2 Q. What is that?

01:20:55 3 A. Well, what prompted this is Muriel Tyler
01:21:11 4 demeaned me at the meeting and said to me in
01:21:15 5 front of other staff that nobody told her
01:21:19 6 that I'm anything other than -- that I'm
01:21:22 7 not -- nobody told her that I'm the senior
01:21:26 8 project manager. She said, "you're just like
01:21:29 9 everybody else. Nobody told me you're a
01:21:31 10 senior project manager."

01:21:32 11 Now, Muriel has access to personnel
01:21:36 12 file, okay? She has access to personnel
01:21:38 13 file, and she said that in a very demeaning
01:21:43 14 manner in the presence of other staff members
01:21:48 15 during the meeting, and this is in 2003,
01:21:53 16 ten years after the fact. And so I've been
01:21:59 17 using this all along, and so somebody who
01:22:02 18 has access to personnel file of the employee
01:22:08 19 who just didn't tell me but threw it open
01:22:12 20 out there in the presence of other staff in
01:22:13 21 a demeaning manner that you're not senior
01:22:16 22 project manager, nobody told me you're
01:22:17 23 senior project manager, so that kind of
01:22:22 24 cast some doubt as to who, what is actually

01:22:26 1 happening here.

01:22:28 2 Q. Mr. Udemba, does Muriel Tyler work in the

01:22:31 3 human resources department?

01:22:32 4 A. No.

01:22:33 5 Q. Does Tracy Watts work in the human resources

01:22:36 6 department?

01:22:36 7 A. Yes.

01:22:38 8 Q. So this is an e-mail, this document Bates

01:22:41 9 stamped No. 3 in Exhibit 4, this is an

01:22:43 10 e-mail from someone in the human resources

01:22:47 11 department that says, and I quote, "it is

01:22:52 12 recognized that Oliver is a senior project

01:22:55 13 manager and this is reflected within the

01:22:57 14 company's organizational charts," close

01:23:00 15 quote. Do you have any reason to think

01:23:01 16 that's untrue?

01:23:04 17 A. I just told you what my feelings are.

01:23:07 18 Q. Please answer my question, sir. That

01:23:10 19 statement in Tracy Watts' e-mail to Emile

01:23:13 20 Tayeh, do you have any reason to think that

01:23:15 21 that statement is untrue?

01:23:16 22 A. I don't have any -- based on what Muriel

01:23:27 23 said to me and how she treated me, who has

01:23:30 24 also access to my personnel file, I don't

01:23:32 1 know what to believe anymore.

01:23:35 2 Q. Are you saying that Tracy Watts' statement

01:23:37 3 to Emile Tayeh in this e-mail that I just

01:23:40 4 quoted to you is untrue?

01:23:43 5 A. I don't know what it is. That's what I'm

01:23:45 6 saying.

01:23:45 7 Q. You don't know if it is untrue?

01:23:47 8 A. Yes, I don't know what it is. I don't know

01:23:50 9 what to make of it.

01:23:53 10 Q. She goes on to say, quote, "in regards to

01:23:55 11 the employee profile record in which he is

01:24:00 12 referring 'job code 621 engineer,' we assign

01:24:04 13 job codes to every employee," close quote.

01:24:08 14 Do you have any reason to think that that's

01:24:10 15 untrue?

01:24:10 16 A. No.

01:24:11 17 Q. She goes on to say, quote: We do not have

01:24:13 18 a different code for every existing job

01:24:17 19 title," close quote. Do you have any

01:24:19 20 reason to believe that that is not true?

01:24:20 21 A. No.

01:24:21 22 Q. She goes on to say, quote, "other persons

01:24:24 23 with his same job title as senior project

01:24:26 24 manager are also documented on the employee

01:24:28 1 profile as engineer," close quote. Do you
01:24:31 2 have any reason to think that that statement
01:24:33 3 is untrue?
01:24:39 4 A. I don't know what to make of that statement.
01:24:41 5 Q. Do you have any reason to think that it was
01:24:43 6 untrue?
01:24:43 7 A. No.
01:24:44 8 Q. She goes on to say, quote, "in regards to
01:24:48 9 061/4019, this coding simply reflects the
01:24:53 10 corporation and department or location where
01:24:54 11 the employee is assigned," close quote. Do
01:24:57 12 you have any reason to think that that was
01:25:00 13 untrue?
01:25:01 14 A. No.
01:25:01 15 Q. She goes on to say, quote, "further, the
01:25:03 16 date of 05/25/91 is simply the week ending
01:25:08 17 date he started working for the company."
01:25:11 18 Do you have any reason to think that that's
01:25:13 19 untrue?
01:25:13 20 A. No.
01:25:23 21 Q. Let's continue with Exhibit 4. No, excuse
01:25:30 22 me. Let's go back to Bates stamp No. 2.
01:25:47 23 In the last paragraph of this memo from you
01:25:50 24 to Emile, you said, quote, "I am at a loss

01:28:20 1 A. I just did. I don't know what to tell you.

01:28:24 2 Q. So you can't explain how the employee profile

01:28:27 3 was not consistent with your duties and

4 functions?

01:28:30 5 A. I just told you I have nothing more to add

01:28:34 6 to that statement.

01:28:40 7 Q. Okay. Turn, please, to Bates stamp No. 5.

01:29:00 8 Am I correct that the handwriting on this

01:29:03 9 page is all yours?

01:29:04 10 A. Yes.

01:29:05 11 Q. So this is a note that presumably you sent

01:29:08 12 to Emile Tayeh --

01:29:10 13 A. Yes.

01:29:10 14 Q. -- on the date shown, October 4, 1995?

01:29:12 15 A. Yes.

01:29:15 16 Q. Turn to Page 6, Bates stamp No. 6.

01:29:20 17 A. Yes.

01:29:20 18 Q. And am I right that this is a memo which

01:29:27 19 Emile sent on October 4th, 1995?

01:29:29 20 A. Yes.

01:29:30 21 Q. And you received a copy of that?

01:29:41 22 A. Well, I was not CC'd on it, but I saw how I

01:29:44 23 got a copy of it.

01:29:45 24 Q. So looking at this memo that Emile penned,

01:29:50 1 that he wrote on October 4, 1995, it looks
01:29:54 2 as if he corrected the situation which you
01:29:59 3 described on the previous page, right? On
01:30:09 4 October 4th you wrote Emile a note saying,
01:30:11 5 "the information in the company directory
01:30:14 6 describing me is incorrect."
01:30:18 7 A. Okay.
01:30:18 8 Q. Am I right?
01:30:19 9 A. Can I read it?
01:30:20 10 Q. Sure.
01:30:24 11 A. "The above is information that's
01:30:25 12 contained" --
01:30:26 13 Q. Do you want to read it out loud? You don't
01:30:28 14 have to.
01:30:28 15 A. All right. Yeah, okay, so I agree with what
01:30:31 16 you just said.
01:30:32 17 Q. So you wrote Emile a note on October 4th
01:30:36 18 saying the information in the company
01:30:44 19 directory is incorrect and on the same day
01:30:50 20 Emile took steps to correct it.
01:30:54 21 A. I didn't say it was incorrect. No, I didn't
01:30:58 22 say that because I don't know whether it's
01:31:07 23 correct or not.
01:31:08 24 Q. What is it that you wanted Emile to do?

01:31:10 1 A. Well, to -- I was informing him of -- first
01:31:21 2 of all, when this happened, when I saw this
01:31:26 3 or somebody actually brought it to my
01:31:28 4 attention, then I went to Lorraine Higgins
01:31:33 5 and showed it to her, and I said to her a
01:31:36 6 mistake has been made, and she said it was
01:31:38 7 not a mistake, that Emile approved the way
01:31:40 8 it was written.

01:31:42 9 Q. Mr. Udemba, please listen to the question.
01:31:51 10 In this memo that you sent to Emile, Bates
01:31:54 11 stamped No. 5, you did not ask him to do
01:31:59 12 anything, did you?

01:32:03 13 A. I brought his attention to it.

01:32:06 14 Q. Is there anything in this memo that you
01:32:07 15 sent to Emile that says, "here's what I want
01:32:10 16 you to do"?

01:32:11 17 A. That's exactly what I said. No, I didn't
01:32:14 18 tell him, no. I just brought his attention
01:32:17 19 to it.

01:32:17 20 Q. So you never said to him in writing or in
01:32:21 21 e-mail or in person or over the phone
01:32:24 22 "here's what I want you to do about this"?

01:32:26 23 A. No.

01:32:27 24 Q. So you sent him this memo, and the same day

01:32:31 1 he took steps to correct the information in
01:32:33 2 the directory, am I right?
01:32:40 3 A. Yeah, he did.
01:32:42 4 Q. Yes or no?
01:32:42 5 A. He took steps, yes, yes.
01:32:46 6 Q. What else did you want him to do?
01:32:52 7 A. Well, the problem is how did he --
01:32:56 8 Q. Please just answer my question. What else
01:32:59 9 did you want him to do?
01:32:59 10 A. Well, what I want him to do, what else would
01:33:06 11 be helpful is Lorraine Higgins --
01:33:13 12 Q. But you never told him Lorraine Higgins.
01:33:16 13 You just told him the information in there
01:33:17 14 is incorrect.
01:33:18 15 A. Lorraine Higgins said that the way this
01:33:23 16 thing was written was given to him, he
01:33:26 17 looked at it, he approved it. So the
01:33:30 18 question is what is, you know, apart from
01:33:34 19 what this memo, what it actually is, what
01:33:36 20 is going on, communicate what you wrote,
01:33:40 21 communicate, you know, instead of people
01:33:42 22 not communicate that to staff members so
01:33:46 23 they don't demean me, communicate what the
01:33:50 24 situation is.

1 A. But the publication says that he's the senior
2 project manager.

01:36:29 3 Q. I'll repeat the question. Emile Tayeh never
01:36:32 4 told you that Kevin McCabe was your boss,
01:36:34 5 did he?

01:36:35 6 A. No, he didn't.

01:36:37 7 Q. So who told you that Kevin McCabe was your
01:36:40 8 boss?

01:36:41 9 A. Kevin McCabe was giving me orders. Lorraine
01:36:46 10 Higgins published something in the company
01:36:51 11 directory that shows Kevin McCabe as having
01:36:56 12 superior position over me, and I went to
01:36:57 13 her and she said Emile approved it. And
01:37:03 14 Kevin McCabe was acting as my boss, giving
01:37:06 15 me assignments and people were talking about
01:37:09 16 it and coming to me and somebody brought it
01:37:11 17 to me and showed it to me.

01:37:12 18 Q. Did Kevin McCabe say to you, "Oliver, I'm
01:37:15 19 your boss"?

01:37:15 20 A. He gave me assignments like he's my boss.

01:37:18 21 Q. Please, just listen to the question. Are
01:37:25 22 you testifying that Kevin McCabe told you
01:37:27 23 "I'm your boss"?

01:37:28 24 A. No.

01:37:30 1 Q. So who told you that Kevin McCabe was your
01:37:34 2 boss?
01:37:36 3 A. Nobody told me that.
01:37:39 4 Q. Now, your boss at this time was Emile Tayeh,
01:37:44 5 correct?
01:37:44 6 A. Yes.
01:37:48 7 Q. You didn't go to Emile and say, "people
01:37:51 8 are telling me that Kevin is my boss," did
01:37:58 9 you?
01:37:58 10 A. Actually, I have at one point told him that
01:38:02 11 Kevin is acting like my boss.
01:38:05 12 Q. Please, listen to my question.
01:38:07 13 A. Yes, I went to him, yes.
01:38:08 14 Q. You told Emile Tayeh that somebody told
01:38:10 15 you that Kevin McCabe was your boss?
01:38:12 16 A. No. I told Emile Tayeh that Kevin is
01:38:16 17 giving me orders and acting like my boss,
01:38:20 18 acting.
01:38:20 19 Q. When did you say that to Emile Tayeh?
01:38:23 20 A. One time, one of the times that did happen.
01:38:39 21 There was one occasion that he acted,
01:38:47 22 brought some assignments to me and told me
01:38:49 23 to do it and report back to him and so --
01:38:55 24 and he just threw it into my in basket.

01:38:59 1 And so I called it to the attention of Emile
01:39:04 2 and told Emile what happened and I remember
01:39:09 3 one time that that happened.
01:39:10 4 Q. When was that?
01:39:11 5 A. I don't remember exactly when.
01:39:13 6 Q. Was it more than ten years ago?
01:39:19 7 A. I don't remember. It was the time that
01:39:21 8 Kevin was there. I don't remember exactly
01:39:23 9 when, but it did happen.
01:39:24 10 Q. What was the assignment that Kevin McCabe
01:39:27 11 tried to give you?
01:39:28 12 A. Kevin McCabe tried to give me an assignment,
01:39:31 13 came to my office and threw a report into
01:39:34 14 my desk and said "review it and report back
01:39:37 15 to me."
01:39:38 16 Q. What was the report about?
01:39:40 17 A. It was about an environmental report.
01:39:46 18 Q. Is that his exact words to you, "review this
01:39:48 19 and get back to me"?
01:39:49 20 A. Yes.
01:39:51 21 Q. You remember those were his exact words?
01:39:53 22 A. It's not exact words. It's my paraphrasing
01:39:57 23 what he did.
01:40:01 24 Q. Can you remember his exact words?

01:40:03 1 A. No, I can't remember his exact words, no.

01:40:08 2 Q. So Kevin McCabe came into your office, threw

01:40:13 3 a report in your in basket and said, "review

01:40:16 4 this and get back to me"?

01:40:17 5 A. Yes.

01:40:18 6 Q. Did he say anything else?

01:40:19 7 A. No, that I can recall.

01:40:21 8 Q. Is that the only time that Kevin McCabe gave

01:40:24 9 you an order?

01:40:25 10 A. No, it's not the only time.

01:40:26 11 Q. Give me another example.

01:40:28 12 A. That's the one that I can recall right now.

01:40:37 13 Q. Can you recall any other thing that Kevin

01:40:42 14 McCabe said to you that you contend was

01:40:44 15 an order?

01:40:45 16 A. No.

01:40:54 17 Q. Do you remember what the report was about?

01:40:56 18 A. It was an environmental report.

01:41:02 19 Q. Did you review it?

01:41:06 20 A. I probably did.

01:41:07 21 Q. Did you get back to him?

01:41:08 22 A. I don't remember if I got back to him or

01:41:15 23 not because he's a company -- I don't

01:41:17 24 remember if I got back to him or not.

01:48:12 1 MR. MOSS: This is a document which
01:48:13 2 by the fax code Mr. Udemba received or his
01:48:18 3 attorney received from the EEOC?

01:48:21 4 MS. LIPEDE: Well, I couldn't vouch
01:48:23 5 for it because I didn't receive it.

01:48:26 6 MR. MOSS: I'm pretty sure I
01:48:27 7 understand where the Exhibit 12 notation
01:48:29 8 comes from. It's a document that was
01:48:32 9 submitted to the EEOC during their
01:48:34 10 investigation into his charge.

01:48:35 11 MS. LIPEDE: Yes, I'll agree with
01:48:37 12 that.

01:48:39 13 Q. Mr. Udemba, take a look at this page, Bates
01:48:42 14 stamp No. 12. This is a memo from Edward
01:48:49 15 Potkay, spelled P O T K A Y, to Patricia
01:48:53 16 Firing, who is sitting next to me, dated
01:48:57 17 March 28, 2004, regarding company
01:48:59 18 automobiles, correct?

01:49:00 19 A. Yes.

01:49:02 20 Q. Do you have any reason to doubt the
01:49:05 21 information that Ed Potkay provided in
01:49:08 22 this memo?

01:49:09 23 A. I can't comment on it one way or the other.

01:49:13 24 Q. Well, this memo purports to set forth a

01:50:34 1 A. I believe. Yeah, approximately, yes, because
01:50:39 2 he stayed about nine months.
01:50:42 3 Q. So in 1992 your testimony is Emile Tayeh
01:50:46 4 told you that you were going to get a company
01:50:49 5 car?
01:50:49 6 A. 1992 or thereabout, yes, because Andrew
01:50:56 7 Beland already had a company car.
01:50:59 8 Q. Andy Beland in 1992 --
01:51:01 9 A. Yes.
01:51:02 10 Q. -- was what? What was his position?
01:51:06 11 A. He was one of the project managers, was a
01:51:09 12 project manager.
01:51:12 13 Q. But you never got a company car?
01:51:16 14 A. I never got a company car.
01:51:17 15 Q. Did you go back to Mr. Tayeh and say how
01:51:20 16 come?
01:51:20 17 A. Every year.
01:51:22 18 Q. Every year?
01:51:23 19 A. Every year.
01:51:27 20 Q. And are you claiming that the failure to
01:51:31 21 give you a company car was because you were
01:51:36 22 black or African or African American?
01:51:45 23 A. I'm claiming that the failure to give me
01:51:51 24 what was promised or what I need for my job

01:51:55 1 is discriminatory, right.

01:51:59 2 Q. My question to you is are you claiming that

01:52:01 3 this was because of your race?

01:52:02 4 A. Yes.

01:52:05 5 Q. Who else besides Andrew Beland had a company

01:52:08 6 car?

01:52:08 7 A. Nobody. I stayed there long enough to really

01:52:15 8 come to that. Most people who came, they

01:52:18 9 left.

01:52:18 10 Q. My question is real simple. Who else besides

01:52:22 11 Andrew Beland had a company car?

01:52:23 12 A. Emile has a company car.

01:52:25 13 Q. Okay. Anybody else?

01:52:27 14 A. No.

01:52:31 15 Q. Did Andrew Beland keep his company car until

01:52:35 16 he resigned from the company?

01:52:37 17 A. Yes.

01:52:38 18 Q. You're sure about that?

01:52:41 19 A. Yes, to my knowledge, yes.

01:52:43 20 Q. Do you know how many miles a year Andrew

01:52:46 21 Beland drove on company business?

01:52:48 22 A. Andrew Beland did not go to the field a lot.

01:52:52 23 Q. No?

01:52:53 24 A. He didn't go to the field a lot.

01:52:55 1 Q. How do you know?

01:52:56 2 A. Because I was in the department. I was there

01:52:58 3 with him.

01:52:59 4 Q. So you saw him every day?

01:53:01 5 A. Yes, I saw him every day. I'm familiar

01:53:03 6 with what he does, and we saw each other

01:53:08 7 every day. He rarely goes to the field.

01:53:13 8 Not, I mean, once in a blue moon.

01:53:17 9 Q. So when did Andrew Beland quit? When did

01:53:20 10 he leave?

01:53:23 11 A. I believe in '94.

01:53:25 12 Q. '94?

01:53:27 13 A. Yeah. It's already stated in the complaint.

01:53:29 14 Q. After he left the company, nobody else in

01:53:32 15 the environmental affairs department had

01:53:34 16 a company car other than the vice president,

01:53:38 17 Emile Tayeh?

01:53:39 18 A. Nobody has stayed long enough to really --

01:53:42 19 MS. LIPEDE: No.

01:53:42 20 A. Nobody has, yes, yes.

01:53:44 21 Q. You said nobody has stayed long enough. Is

01:53:47 22 there some company policy --

01:53:49 23 A. Nobody except me.

01:53:51 24 Q. Is there a company policy that says you get

01:53:52 1 a company car after you've been there for so
01:53:55 2 many years?
01:53:57 3 A. I don't know.
01:53:59 4 Q. So where are you getting this thing that
01:54:03 5 you're saying to me about nobody stayed
01:54:06 6 there long enough? Where are you getting
01:54:06 7 that?
01:54:09 8 A. What I'm saying to you, nobody stayed long
01:54:12 9 enough is a fact. I don't know what it has
01:54:12 10 to do with a car.
01:54:13 11 Q. You have no basis for asserting that you
01:54:16 12 get a company car after you've been employed
01:54:19 13 for a certain number of years, do you?
01:54:22 14 A. No. The basis I'm talking that he told me
01:54:26 15 I'd get a company car, and no.
01:54:29 16 Q. So when you didn't get a company car in
01:54:31 17 1994, were you convinced that that was
01:54:34 18 because of your race?
01:54:39 19 A. Yes.
01:54:40 20 Q. In 1994?
01:54:43 21 A. If I didn't get a promotion, yes. If I
01:54:45 22 didn't get a car, yes.
01:54:46 23 Q. So in 1994 you believed the failure to give
01:54:49 24 you a company car was due to your race?

01:54:50 1 A. Yes.

01:54:51 2 Q. But you didn't complain about that to the

01:54:54 3 human resources department at Cumberland

01:54:55 4 Farms, did you?

01:54:56 5 A. No.

01:54:57 6 Q. And you didn't file a charge about that

01:54:59 7 with the EEOC or the MCAD, did you?

01:55:02 8 A. No, no.

01:55:05 9 Q. Why not?

01:55:08 10 A. I didn't.

01:55:10 11 Q. Why didn't you if you thought it was due to

01:55:13 12 your race?

01:55:16 13 A. When he told me just the same reason I did

01:55:20 14 not file for the comments he made about my

01:55:25 15 race, when he denied me the promotion to

01:55:27 16 replace Andrew Beland.

01:55:28 17 Q. And that reason was?

01:55:30 18 A. I didn't.

01:55:31 19 Q. Because why didn't you file a complaint?

01:55:33 20 A. I just did not.

01:55:35 21 Q. That's the only answer?

01:55:35 22 A. Yes. I did not.

01:55:37 23 Q. Then why didn't you complain to the human

01:55:39 24 resources department in 1994 that Emile

01:55:42 1 Tayeh promised me a company car and now
01:55:44 2 he's not delivering it?
01:55:47 3 A. Because I didn't do that every year. I
01:55:56 4 still remind him about it.
01:55:58 5 Q. But why didn't you complain to the human
01:55:59 6 resource department?
01:56:00 7 A. Because I have work to do. I have work to
01:56:03 8 do.
01:56:03 9 Q. That's the only reason that you didn't
01:56:05 10 complain about it?
01:56:08 11 A. That's the major reason.
01:56:12 12 Q. You said that's the major reason and my
01:56:15 13 question is, is that the only reason why
01:56:17 14 you did not complain about that to the
01:56:19 15 human resources department?
01:56:21 16 A. No.
01:56:21 17 Q. What other reason was there for your failure
01:56:23 18 to complain about that?
01:56:24 19 A. I already complained about the denial of
01:56:28 20 promotion so, you know, I can't be
01:56:31 21 complaining about everything.
01:56:35 22 Q. Is there any other reason why you didn't
01:56:36 23 complain about this to the human resources
01:56:39 24 department?

01:56:39 1 A. Not that I can think of.

01:56:57 2 Q. Please turn to Page 13 in Exhibit 4, Bates

01:57:01 3 stamped 13. What is this?

01:57:14 4 A. This is a notice of -- this is a publication

01:57:17 5 in the newspaper as required by the MCP.

01:57:22 6 Q. Does this have some relevance to this case?

01:57:38 7 A. It might have.

01:57:41 8 Q. Would you tell me what that is, please.

01:57:54 9 A. You know, I don't know what relevance it

01:57:56 10 has at this point. I don't know what

01:58:00 11 specific relevance it might have at this

01:58:01 12 point.

01:58:01 13 Q. Does this document support any of your

01:58:03 14 claims in this case?

01:58:06 15 A. I don't know. Like I said, I don't have

01:58:08 16 any specific --

01:58:10 17 MS. LIPEDE: Did you read it?

01:58:16 18 MR. MOSS: I think Mr. Udemba's

01:58:18 19 attorney just asked him if he had read it.

01:58:24 20 Q. Have you read it?

01:58:27 21 A. I know what the document is.

01:58:29 22 MS. LIPEDE: Review it.

01:58:31 23 A. Okay. (Witness examines document) Yeah.

01:59:05 24 Q. So does that document support any of your

02:10:16 1 I'm a little slow. Well, I mean, the
02:10:24 2 objection is just --
02:10:26 3 MR. MOSS: I'm not asking.
02:10:34 4 A. But I've already told you --
02:10:34 5 MS. LIPEDE: No, I've objected.
02:11:12 6 MR. MOSS: Take a five-minute break.
7 (Break taken)
02:21:19 8 BY MR. MOSS:
02:21:24 9 Q. Mr. Udemba, again with Exhibit 5, turn to
02:21:31 10 Bates stamp page 39, please.
02:21:41 11 A. Yes.
02:21:42 12 Q. Now, I remember a reference in your complaint
02:21:47 13 to this particular evaluation, and just
02:21:50 14 going from memory, I think that your
02:21:53 15 complaint says that Lorraine Higgins, the
02:21:57 16 office manager, wrote an evaluation when
02:22:00 17 she wasn't your supervisor. Is that a fair
02:22:04 18 paraphrase of your complaint?
02:22:05 19 A. Yes.
02:22:06 20 Q. And this document that I'm looking at,
02:22:10 21 Bates stamped Nos. 39, 40, 41, is that right,
02:22:22 22 that's the evaluation in question?
02:22:26 23 A. It appears to be.
02:22:27 24 Q. It's a document you produced?

02:22:31 1 A. Yes.

02:22:33 2 Q. Was that the document in question, then?

02:22:35 3 That's the evaluation you're referring to?

02:22:36 4 A. Yes.

02:22:37 5 Q. And on the page that's Bates stamped 41, at

02:22:44 6 the bottom I see some handwriting. Is that

02:22:46 7 your handwriting?

02:22:47 8 A. Yes.

02:22:48 9 Q. Where it says "I report to the vice

02:23:00 10 president, Emile Tayeh. It is a major

02:23:03 11 discrepancy to indicate Lorraine Higgins,

02:23:06 12 office supervisor, as my supervisor."

02:23:12 13 A. Yes.

02:23:13 14 Q. Have I quoted that correctly?

02:23:14 15 A. Yes.

02:23:14 16 Q. And you wrote that in the space on the

02:23:17 17 evaluation form for employee comments?

02:23:19 18 A. Yes.

02:23:20 19 Q. So that was your comment?

02:23:21 20 A. Yes.

02:23:22 21 Q. That was the only comment you made?

02:23:23 22 A. Yes.

02:23:25 23 Q. And did you say anything to Emile Tayeh

02:23:29 24 other than what you wrote in the space for

02:23:32	1	employee comments?
02:23:34	2	A. I don't remember.
02:23:42	3	Q. Please turn to the documents Bates stamped
02:23:47	4	43, 44 and 45.
02:23:55	5	A. Yes.
02:23:56	6	Q. Now, am I right that those three pages are
02:23:59	7	an exact duplicate of Pages 39, 40 and 41,
02:24:06	8	except that Lorraine Higgins' name has been
02:24:12	9	whited out and Emile Tayeh typed in its
02:24:16	10	place?
02:24:16	11	A. Yes.
02:24:17	12	Q. So am I correct that after receiving your
02:24:25	13	comment on the evaluation about reporting
02:24:29	14	to Emile instead of Lorraine, that Emile
02:24:37	15	changed Lorraine's name, took her name off
02:24:39	16	and put his name on?
02:24:40	17	A. Yes.
02:24:45	18	Q. Did you ask him to do that?
02:24:48	19	A. No.
02:24:49	20	Q. I don't see on here that you asked him to
02:24:51	21	do anything.
02:24:56	22	A. I said no.
02:24:57	23	Q. So you didn't ask him to do anything in
02:25:00	24	response to your comment on the evaluation?

02:27:47 1 Q. So my question again is, do you know whether
02:27:55 2 Emile scored the evaluation or Lorraine
02:27:58 3 Higgins scored it? Do you know?
02:28:06 4 A. I don't know.
02:28:06 5 Q. You don't?
02:28:08 6 A. No.
02:28:17 7 Q. Now, is it your testimony, Mr. Udemba, that
02:28:24 8 because Lorraine Higgins' name appears in
02:28:27 9 the space for supervisor on Bates stamp 39,
02:28:30 10 that this was an act of racial
02:28:33 11 discrimination?
02:28:33 12 A. I don't know what it is. No, it's not my
02:28:36 13 testimony.
02:28:37 14 Q. I'm sorry?
02:28:37 15 A. It's not my testimony.
02:28:39 16 Q. It's not. So you're not claiming that this
02:28:41 17 was an act of racial discrimination?
02:28:43 18 A. No. I don't know what it is.
02:28:47 19 Q. Are you contending that this is evidence of
02:28:51 20 racial discrimination against you?
02:28:54 21 A. I don't know.
02:28:54 22 Q. You don't know?
02:28:56 23 A. No.
02:29:31 24 Q. Is there anything else -- there are a number

02:34:44 1 A. Yes.

02:34:45 2 Q. All right. Good. Now, Mr. Udemba, as I
02:34:52 3 understand it, it is your contention that
02:34:55 4 this chart supports your claim of racial
02:34:59 5 discrimination?

02:34:59 6 A. Yes.

02:35:00 7 Q. Please explain how.

02:35:04 8 A. That's what I was trying to explain to you.

02:35:06 9 MS. LIPEDE: Explain it.

02:35:13 10 A. The list under environmental section, you
02:35:16 11 see every other section has a section
02:35:20 12 head. The only section that doesn't have
02:35:28 13 a section head is the environmental section
02:35:31 14 as depicted by this chart. And at the top
02:35:33 15 of that, section head is designated as
02:35:37 16 environmental engineers.

02:35:38 17 Q. I'm sorry.

02:35:40 18 A. At the top, the section head of that
02:35:43 19 environmental section is designated
02:35:47 20 environmental engineers, which is vacant.

02:35:49 21 Q. Engineers?

02:35:50 22 A. Well, that's what it says. Maybe it's a
23 typo.

02:35:56 24 Q. What does it say?

02:35:57	1	A. It says environmental engineers.
02:36:00	2	Q. Plural?
02:36:01	3	A. Plural, yeah.
02:36:06	4	Q. Go ahead. Continue with your answer.
02:36:08	5	A. Okay. So every other section has a section
02:36:13	6	head. The only section that doesn't have
02:36:14	7	a section head is my section, and at the
02:36:18	8	top of it, it says environmental engineers.
02:36:24	9	You know, at the very least, I should have
02:36:28	10	been -- I'm certainly qualified, more than
02:36:32	11	qualified to take the environmental section
02:36:35	12	as the environmental engineer, to be the
02:36:37	13	head of the environmental section, to
02:36:47	14	occupy that, to be the head, to occupy that
02:36:52	15	position marked by environmental engineer.
02:36:56	16	I'm certainly qualified in the least to be
02:37:01	17	promoted to that position. And being the
02:37:06	18	only in-house LSP and having spent all
02:37:10	19	these years with the company and also that
02:37:18	20	is how my business card comes to play,
02:37:21	21	this title, environmental engineer, so
02:37:26	22	engineer, as the case may be, there's also
02:37:29	23	some title that I've held in 1991, '93,
02:37:33	24	ten years before. So I am, according to

02:39:00	1	Q. That's your contention?
02:39:01	2	A. Yes.
02:39:02	3	Q. And you say you should have been that person?
02:39:04	4	A. I said I'm qualified --
02:39:07	5	Q. Yes or no.
02:39:07	6	A. Yes.
02:39:10	7	Q. It's your contention that -- oh, and the
02:39:13	8	company never did put somebody in that
02:39:15	9	position, did they?
02:39:19	10	A. I don't know.
02:39:20	11	Q. You don't know?
02:39:21	12	A. No.
02:39:22	13	Q. Can you identify anybody?
02:39:23	14	A. No, I can't.
02:39:24	15	Q. So is it your contention that the company
02:39:29	16	deliberately left, deliberately refrained
02:39:33	17	from filling that position because of your
02:39:35	18	race?
02:39:35	19	A. Yes.
02:39:36	20	Q. Based upon what?
02:39:39	21	A. Based upon the historical trends, based
02:39:43	22	upon the fact that in 1991, '93, I was
02:39:48	23	environmental engineer and I couldn't even
02:39:49	24	fill a position which is the same thing I

02:39:53 1 held in 1991, '93, when somebody else who
02:39:57 2 is white was supervising me. Okay? A
02:40:01 3 position that I held when a white person
02:40:03 4 was supervising me I could not fill in 2003
02:40:09 5 when that person had left and I was not
02:40:11 6 allowed to -- I was not promoted to that
02:40:14 7 position when certainly I'm, you know, well
02:40:17 8 qualified to fill it.

02:40:18 9 Q. So you're saying that somebody within
02:40:23 10 Cumberland Farms intentionally decided not
02:40:27 11 to put anybody in this position because if
02:40:34 12 they had filled that position, they would
02:40:36 13 have had no choice but to fill it with you?

02:40:39 14 A. Yes.

02:40:39 15 MS. LIPEDE: Objection.

02:40:40 16 Q. Is that your argument?

02:40:41 17 MS. LIPEDE: Objection.

02:40:42 18 Q. Yes or no?

02:40:44 19 MS. LIPEDE: Yes or no.

02:40:45 20 A. Yes.

02:40:48 21 Q. Now, looking again at this chart, in the
02:40:51 22 box we're talking about, it says
02:40:54 23 environmental engineers, and is that the
02:40:58 24 label that's given to the people listed

02:57:57 1 Q. And there was remediation work at this site
02:58:01 2 also, wasn't there?

02:58:01 3 A. Yes.

02:58:01 4 Q. You did not design any part of the
02:58:07 5 remediation plan, did you?

02:58:09 6 A. Design of remediation is a collaborative
02:58:13 7 effort. It's not something that is done --
02:58:17 8 it has a lot of inputs. Now, the actual
02:58:23 9 design is done -- I did not do, but when
02:58:26 10 the design is done, finished, it comes back
02:58:29 11 to me for review.

02:58:30 12 Q. So ECS designed the remediation plan, you
02:58:34 13 reviewed it?

02:58:35 14 A. Yes.

02:58:36 15 Q. And, in fact, that is the way the work is
02:58:41 16 divided up between yourself and the various
02:58:44 17 consultants that Cumberland Farms uses; am
02:58:46 18 I right? They design the remediation plans,
02:58:49 19 you review them?

02:58:50 20 A. Yes.

02:58:50 21 Q. You do not design the remediation plans
02:58:52 22 yourself?

02:58:52 23 A. No.

02:58:54 24 Q. And that's the way it's always been, isn't

02:58:56 1 it?

02:58:56 2 A. Yes.

02:59:24 3 MR. MOSS: Can we take a five-minute

02:59:26 4 break?

02:59:27 5 MS. LIPEDE: Yes.

6 (Break taken)

03:06:00 7 BY MR. MOSS:

03:09:17 8 Q. Please turn to Exhibit 6, and I want to

03:09:33 9 direct your attention to Bates stamp

03:09:38 10 documents 99 all the way through 150, and

03:09:50 11 I'll ask my question and give you a moment

03:09:51 12 to consider the documents, okay? My question

03:09:55 13 is as to all of those pages, is there

03:10:02 14 anything in any of those pages that you

03:10:05 15 contend support your claims in this case?

03:10:08 16 A. (Witness examines documents) Yes.

03:10:16 17 Q. And what is that?

03:10:21 18 A. This is an effort to show my value to the

03:10:27 19 company.

03:10:28 20 Q. And is there anything more than that in

03:10:31 21 these documents that support your claims in

03:10:33 22 this case?

03:10:36 23 A. It also shows the level of my expertise at

03:10:43 24 the time I joined the company in terms of

03:18:17 1 documents that Mr. Udemba --

03:18:19 2 MS. LIPEDE: All documents within

03:18:20 3 my possession have been turned over. Now,

03:18:24 4 what Mr. Hrones turned over, I don't know,

03:18:27 5 but it's my understanding that he turned

03:18:29 6 over the whole file to me so I believe

03:18:34 7 everything was turned over to you.

03:19:09 8 Q. Mr. Udemba, in Paragraph 27 of your complaint

03:19:13 9 which is Exhibit 1 in this case -- do you

03:19:18 10 want a moment to get that in front of you?

03:19:19 11 A. Yes.

03:19:20 12 Q. Go ahead.

03:19:21 13 MS. LIPEDE: What paragraph?

03:19:23 14 MR. MOSS: 27.

03:19:28 15 (Pause)

03:19:28 16 A. Yeah, I have it.

03:19:30 17 Q. Paragraph 27.

03:19:32 18 A. 27. Okay. Yes.

03:19:41 19 Q. In Paragraph 27 you assert that Lorraine

03:19:43 20 Higgins began issuing directives to you?

03:19:46 21 A. Yes.

03:19:47 22 Q. Such as what?

03:19:57 23 A. Such as evaluating my --

03:20:03 24 Q. No, no, Mr. Udemba. You make that a

03:20:06 1 separate allegation. In Paragraph 27 you
03:20:12 2 said, quote, "as time progressed, Ms. Higgins
03:20:15 3 began issuing directives to Mr. Udemba and
03:20:18 4 even completed a performance evaluation of
03:20:20 5 Mr. Udemba." I'm not asking you about the
03:20:22 6 performance evaluation. My question is
03:20:24 7 what directives did Lorraine Higgins issue
03:20:27 8 to you?
03:20:28 9 A. I can't remember any one specific at this
03:20:33 10 point.
03:20:33 11 Q. You can't remember a single one?
03:20:34 12 A. No.
03:20:41 13 Q. Is it your contention that the directives
03:20:45 14 that she issued to you are evidence of
03:20:47 15 racial discrimination?
03:20:52 16 A. I don't know.
03:20:53 17 Q. You don't know?
03:20:54 18 A. No.
03:20:55 19 Q. Why did you put it in your complaint?
03:21:04 20 A. It is to show how I'm being demeaned in the
03:21:08 21 department.
03:21:08 22 Q. How is it demeaning for Lorraine Higgins to
03:21:12 23 issue directives to you?
03:21:13 24 A. It is demeaning for her to do my evaluation

03:21:16 1 because she's not --

03:21:18 2 Q. I'm not asking about your evaluation.

03:21:21 3 You're making two allegations in Paragraph

03:21:23 4 27, am I right?

03:21:24 5 A. Yes.

03:21:25 6 Q. One concerns your evaluation and one concerns

03:21:27 7 the directives that you say Lorraine Higgins

03:21:31 8 issued.

03:21:32 9 A. If she issues directives as my boss, as my

03:21:35 10 supervisor when she's not, that's demeaning.

03:21:38 11 Q. Well, where does it say that she issued

03:21:41 12 directives to you as your boss?

03:21:44 13 A. Well, that's what is amplified indicating

03:21:50 14 that she signed my evaluation form.

03:21:52 15 Q. I'm not asking you about your evaluation.

03:21:57 16 A. That no way shows that, no.

03:21:58 17 Q. So the fact that she issued directives to

03:22:00 18 you is not evidence of racial discrimination?

03:22:03 19 A. I don't know.

03:22:04 20 Q. Well, are you saying it is or are you saying

03:22:07 21 it's not?

03:22:08 22 A. I'm saying I don't know.

03:22:10 23 Q. You don't know if it is evidence of

03:22:13 24 discrimination against you?

03:22:15 1 A. Yes.

03:22:43 2 Q. In Paragraph 29 of your complaint, you said

03:22:50 3 that other white individuals were trained

03:22:54 4 by you and then promoted to supervisory

03:22:58 5 positions over you. Who are you referring

03:23:02 6 to?

03:23:03 7 A. I'm referring to Kevin McCabe.

03:23:13 8 Q. And you had already given testimony about

03:23:17 9 Mr. McCabe and the question of whether he

03:23:21 10 was your boss. Do you have anything to

03:23:22 11 add to that?

03:23:23 12 A. No.

03:23:25 13 Q. Who else besides Mr. McCabe?

03:23:28 14 A. I will mention Angela Pimental.

03:23:32 15 Q. Anybody else?

03:23:35 16 A. I can't think of anyone.

03:23:42 17 Q. When was Angela Pimental promoted to a

03:23:47 18 supervisory position over you?

03:23:49 19 A. I don't know that.

03:23:54 20 Q. I'm sorry?

03:23:54 21 A. I don't know. I don't know that.

03:23:56 22 Q. Was she promoted to a supervisory position

03:23:59 23 over you?

03:24:00 24 A. I don't know.

03:26:34 1 has been with the company, one time Angela
03:26:37 2 brought that to my office and instructed
03:26:40 3 me to sit down with Jason and talk with
03:26:44 4 Jason.
03:26:45 5 Q. What exactly did she say on that occasion?
03:26:48 6 A. What I just said now is a paraphrase of
03:26:50 7 what she said.
03:26:51 8 Q. Can you remember exactly what she said?
03:26:53 9 A. I cannot.
03:26:56 10 Q. You said she instructed you. What words
03:26:59 11 did she use?
03:27:00 12 A. I'm just paraphrase what she said. She
03:27:03 13 came into my office and instructed me to
03:27:06 14 sit down and talk with Jason.
03:27:09 15 Q. Did she order you to sit down and work with
03:27:18 16 Jason?
03:27:18 17 A. She instructed me, was the word that I used.
03:27:18 18 Q. Did she say "I'm your boss"?
03:27:27 19 A. No.
03:27:27 20 Q. Did she ever say "I'm your boss"?
03:27:27 21 A. No.
03:27:27 22 Q. Did she ever say "I've been promoted over
03:27:27 23 you"?
03:27:27 24 A. No.

03:27:27 1 Q. Did anybody ever say to you that Angela has
03:27:29 2 been promoted over you?
03:27:30 3 A. No.
03:27:31 4 Q. Did anybody ever say to you that Angela is
03:27:33 5 your boss?
03:27:34 6 A. No.
03:27:38 7 Q. Is there anything else that you're relying
03:27:40 8 on for your claim in this case that Angela
03:27:45 9 Pimental was promoted to a supervisory
03:27:47 10 position over you other than that one
03:27:49 11 incident that you just described?
03:27:50 12 A. This is the only one I can recall at this
03:27:53 13 point.
03:27:57 14 Q. Is there anybody besides Angela Pimental
03:27:59 15 and Kevin McCabe that you are referring to
03:28:02 16 in Paragraph 29 of the complaint?
03:28:05 17 A. Those are the only two individuals I can
03:28:07 18 recall right now.
03:28:21 19 Q. In Paragraph 31 of your complaint, you said
03:28:29 20 that Mr. McCabe became your superior issuing
03:28:34 21 directives. Directives to you?
03:28:35 22 A. Yes.
03:28:36 23 Q. What directive did he issue to you?
03:28:40 24 A. Like I told you before, she would come into

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORIGINAL

OLIVER UDEMBA,

Plaintiff

vs.

No. 05-11161-RGS

CUMBERLAND FARMS, INC.

and EMILE C. TAYEH,

Defendants

VOLUME: III

PAGES: 3-1 - 3-155

CONTINUED DEPOSITION of OLIVER UDEMBA, a
witness called on behalf of the
Defendants, pursuant to the Federal Rules
of Civil Procedure, before Judith McGovern
Williams, Certified Shorthand Reporter
No. 130993, Registered Professional
Reporter, Certified Realtime Reporter,
Certified LiveNote Reporter, and Notary
Public in and for the Commonwealth of
Massachusetts, at the offices of Seyfarth,
Shaw, Two Seaport Lane, Boston,
Massachusetts 02110, on Friday, March 17,
2006, commencing at 9:16 a.m.

1 McCabe earned more money than you did.

2 A. I am saying that.

3 Q. Was it 1991, 1992, 1993? Give me a date.

4 A. No. I just want -- I just want to
5 explain. When I came into Cumberland
6 Farms, I was paid \$23,000. Okay?

7 When McCabe came in, he was not
8 paid \$23,000. That's what I'm saying.

9 In addition, he also received a
10 higher rate of pay increases as time goes
11 on. That's exactly what I'm saying.

12 Q. Okay.

13 A. I am not saying --

14 Q. Was there ever a time when you and Kevin
15 McCabe were both working in the
16 environmental affairs department at
17 Cumberland Farms that you claim he was
18 paid more money than you?

19 A. No. He is paid --

20 Q. Yes or no.

21 A. No.

22 Q. Okay. So at no time -- as far as you
23 know, at no time was Kevin McCabe paid
24 more money than you; correct?

1 A. That's not what I am saying.

2 Q. You are not making that claim?

3 A. No.

4 Q. Okay. As I understand it from the
5 testimony you have just given, you are
6 making two claims with regard to Kevin
7 McCabe's pay, and the first of those is
8 that his starting salary when he was hired
9 at Cumberland Farms was higher than the
10 salary that you were hired at? Is that
11 your claim?

12 A. I am saying --

13 MS. LIPEDE: Is that?

14 Q. Yes or no.

15 A. Yes.

16 Q. That's your claim?

17 A. Yes.

18 Q. And the second claim you're making is that
19 one or more of the salary increases he
20 received at Cumberland Farms was higher
21 than one or more of the salary increases
22 you received at Cumberland Farms; is that
23 correct?

24 A. Yes.

1 Q. Okay. Are you making any other claims
2 with regard to Kevin McCabe's
3 compensation?

4 A. Well --

5 Q. Yes or no.

6 A. Yes.

7 Q. What other claims are you making with
8 regard to Kevin McCabe's compensation?

9 A. That he is treated more fairly than me.

10 Q. That has nothing to do with compensation,
11 sir.

12 A. Okay.

13 Q. I am asking you about pay.

14 A. None -- not that I know of, no.

15 Q. Okay. Now what evidence do you have that
16 Cumberland Farms paid Kevin McCabe a
17 higher starting salary than it paid you
18 when you were hired because of his race or
19 your race?

20 MS. LIPEDE: I am sorry. What
21 was the question?

22 Q. You are claiming that Kevin McCabe was
23 paid a higher starting salary when he
24 started work at Cumberland Farms than you

1 furnished with any other equipment or
2 benefit that you were not furnished with?

3 A. Kevin McCabe doesn't -- doesn't need a
4 company car.

5 Q. Just yes or no.

6 A. No, no.

7 Q. So when you say that Kevin McCabe was
8 treated more favorably than you, is there
9 anything else that you are relying upon
10 other than what you have just said, that
11 he was not demeaned and you were demeaned?

12 A. No.

13 Q. Okay. Thank you.

14 Now you say in paragraph 31 of
15 your Complaint that Kevin McCabe performed
16 less than 10 percent of the duties that
17 you performed. What do you base that on?

18 A. I base that on the volume of work that I
19 do and what he does.

20 Q. How do you know what he does --

21 A. I don't --

22 Q. -- or what he did?

23 A. Well, I have an idea.

24 Q. Based upon what?

1 A. Based upon observation of what, you know,
2 what he does.

3 Q. You were not his supervisor?

4 A. No.

5 Q. You did not assign him work?

6 A. No.

7 Q. And your supervisor was Emile Tayeh?

8 A. Yes.

9 Q. Mr. Tayeh was also Kevin McCabe's
10 supervisor?

11 A. Yes.

12 Q. Did Emile Tayeh routinely show you what
13 assignments he was giving everybody else
14 in the department?

15 A. No.

16 Q. So when you say that you base this claim
17 that McCabe performed less than 10 percent
18 of the duties you performed, you based it
19 upon your observation. How often did you
20 observe him?

21 A. As often as I was -- as often as possible.

22 Q. Did he work in the same physical space
23 that you did?

24 A. Yes -- well, not in the same, but he

1 worked, you know, adjacent to my, you
2 know, to my space.

3 Q. Did you have a separate office?

4 A. Yes.

5 Q. Did your office have walls?

6 A. Yes.

7 Q. Floor to ceiling walls?

8 A. Yes.

9 Q. It is not a cubicle? It is a regular
10 enclosed office?

11 A. Yes. His office, you know, his space is
12 adjacent to mine.

13 Q. His office was next to yours?

14 A. Yes.

15 Q. Did his office have a door?

16 A. Yes.

17 Q. Did your office have a door?

18 A. Yes.

19 Q. Does your office have a telephone?

20 A. Yes.

21 Q. Did his office have a telephone?

22 A. Yes.

23 Q. Did you share his office?

24 A. No.

1 Q. Did he share your office?

2 A. No.

3 Q. Did you share his telephone?

4 A. No.

5 Q. Did he share your telephone?

6 A. No.

7 Q. Did anybody share your telephone?

8 A. I don't know.

9 Q. Not as far as you know?

10 A. Not as far as I know.

11 Q. Now when you say you observed Kevin

12 McCabe, observed him where?

13 A. I observed him in the office.

14 Q. In which office?

15 A. In -- in the office environment. In the
16 environment of the office.

17 Q. Which part of the office environment?

18 A. In the office environment in the -- in the
19 environment of the department.

20 Q. The common area?

21 A. The common area, yes.

22 Q. Okay. What percentage of your day did you
23 spend in the common area of the office as
24 opposed to in your office or outside of

1 the office?

2 A. Not much.

3 Q. Not much. An hour?

4 A. Not much.

5 Q. Less than an hour?

6 A. Not much, I said.

7 Q. You can't quantify it?

8 A. No.

9 Q. Okay. So every time that you were in the
10 common area of the office was McCabe also
11 in the common area?

12 A. Not necessarily.

13 Q. So if you were -- if you didn't spend much
14 time in the common area, is it fair to say
15 that the amount of time that both of you,
16 you and McCabe, spent in the common area
17 was even less?

18 A. Could you repeat the question again?

19 Q. Yes. You said that the amount of time
20 that you spent in the common area of the
21 office was not much; correct?

22 A. Yes.

23 Q. And you also said that McCabe was not in
24 the common area every time that you were;

1 correct?

2 A. That's possible. It is fair to say that.
3 Yes.

4 Q. I believe the testimony you gave a minute
5 ago ran like this: "So every time that
6 you were in the common area of the office
7 was McCabe also in the common area?"

8 And your answer was: "Not
9 necessarily."

10 A. Yes.

11 Q. Okay. So when you were in the common
12 area, were you preparing reports out
13 there?

14 A. Not necessarily.

15 Q. Yes or no.

16 A. No. I could be signing something. I
17 could have a document and, you know, I
18 could be signing something or I could be,
19 you know, reviewing something.

20 Q. And what was McCabe doing in the common
21 area?

22 A. I can't tell you what he was doing. I
23 don't know.

24 Q. You can't tell me what he was doing at any

1 part of his day, can you?

2 MS. LIPEDE: Objection.

3 A. Yes. I could tell you that. I could tell
4 you what -- what he is doing in some parts
5 of his day.

6 Q. Okay. Go ahead. Tell me what he did.

7 A. He was complying -- part of what he did
8 was compile an inventory -- equipment --
9 inventory -- equipment inventory.

10 Q. Is that it?

11 A. That is part of what he did.

12 Q. That's all he did?

13 A. No. That is part of what he did.

14 Q. How do you --

15 A. That is the major thing he did.

16 Q. That is the major thing he did was compile
17 an equipment inventory?

18 A. Right.

19 Q. How many years did he work there?

20 A. I think it is in the record. I don't
21 remember. I can't, you know, I don't know
22 how many -- I can't tell you with
23 specificity how many years he worked
24 there. It is in the record.

1 Q. What else did McCabe do when he worked at
2 Cumberland Farms besides compile an
3 equipment inventory?

4 A. That is the major thing he did.

5 Q. What else did he do? You said it is the
6 major thing. Is that the only thing he
7 did?

8 A. No, I didn't say that is the only thing.
9 That is the major thing. That is the
10 major thing that he did.

11 Q. What else did he do?

12 A. I just told you the major thing he did.

13 Q. Can you tell me anything else that he did?
14 Yes or no.

15 A. I just told you the major part of his
16 work.

17 Q. Mr. Udemba, please answer my question.
18 Can you tell me anything else that McCabe
19 did when he worked at Cumberland Farms?
20 Either you can or you can't. It is a yes
21 or no question.

22 A. No.

23 Q. How much time did McCabe spend compiling
24 an equipment inventory? 10 percent of his

1 time? 50 percent of his time?

2 A. That was the major part of his work.

3 Q. Please answer my question, Mr. Udemba.

4 A. I don't know whether it is 10 percent
5 or -- you know, that's --

6 Q. Well, you don't know how much time he
7 spent doing any of his duties, do you?

8 A. I answered the question that that was the
9 major part of.

10 MS. LIPEDE: Oliver, --

11 A. No, I don't know.

12 Q. Mr. Udemba, I would like you to turn to
13 paragraph 37 of your Complaint, which is
14 exhibit one.

15 A. Exhibit one?

16 (Witness complying.)

17 Q. Do you have that in front of you, sir?

18 A. Yes.

19 Q. In paragraph 37, you say, "When Mr. McCabe
20 left CFI in 1997, Mr. Udemba expected that
21 he would be promoted to supervising
22 project manager."

23 Do you see where that appears --

24 A. Yes.

1 better than you in terms of compensation?

2 A. Well, according to the -- the employee
3 profile sheet, Angela Pimental got --
4 within a short period of time got promoted
5 into three positions, and at one time had
6 a 50 percent rate increase.

7 Q. So are you claiming that she was paid more
8 money than you?

9 A. That's not what I'm saying. I said she
10 got promoted more rapidly, meaning have
11 not -- have not -- have not been promoted,
12 even with little or -- you know, with no
13 -- with less qualification and got a
14 higher rate, you know, a higher rate of
15 pay increase.

16 Q. So I want to understand your claim in this
17 lawsuit, Mr. Udemba. It sounds like
18 you're saying that the company promoted
19 Angela Pimental and increased her pay in
20 order to demean you.

21 A. No.

22 MS. LIPEDE: Objection.

23 Q. Is that your claim?

24 A. I am saying --

1 was because of your race or her race?

2 A. It is obvious. Because -- because if --
3 if you were to reverse the role, I come
4 into Cumberland Farms with a high school
5 education, and then a white person with an
6 engineering degree have spent, with that
7 level of experience, and is an LSP, has
8 attained the highest level of -- the
9 highest level of professional status, if I
10 was -- if I was a black person with a high
11 school education with this white person, I
12 don't see how I -- I don't see how all of
13 a sudden within a few years or within a
14 year I would attain the same status as
15 that person. It just -- it just -- it is
16 just common sense. It just -- it just --
17 it just wouldn't happen.

18 Q. Is there anything else that you can offer
19 in support of your claim with respect to
20 Angela Pimental other than what you have
21 just told me?

22 A. Well, I don't have any -- any other thing
23 more compelling than this.

24 Q. Well, I am not asking you to rank it.

1 she, you know, I was -- she called me --
2 she told me that she needed me in the
3 conference room.

4 So, you know, I went in there,
5 and as they were talking, then I -- I
6 asked a question. I asked a question. I
7 was trying to say -- I said -- I said, "I
8 don't understand. What is going on? I
9 mean is there any" -- what, you know, I
10 was trying to understand what the problem
11 was.

12 And, you know, she shouted me
13 down. She told me to, you know, to stop.
14 That Angela was talking. That Angela
15 should talk first. And she shouted me
16 down.

17 MR. MOSS: Off the record for a
18 minute.

19 (Discussion off the record.)

20 MR. MOSS: Back on the record.

21 BY MR. MOSS:

22 Q. So you have identified two incidents in
23 which you said that Muriel Tyler rudely
24 ordered you around. Was there a third

1 incident?

2 A. There might have been, but these are the
3 ones that I recall right now.

4 Q. You can't remember any other occasion that
5 she rudely ordered you around?

6 A. I don't recall any right now, any other.

7 Q. Is it your contention that on each of
8 these two occasions that you have
9 described that Muriel acted that way
10 because you're black?

11 A. I don't know why she acted that way.

12 Q. Now in paragraph 43 of your Complaint, you
13 say, "When Mr. Udemba related these events
14 to Mr. Tayeh, he stated, quote, if you do
15 not like the way you were treated, you
16 should quit, close quote."

17 A. Yes.

18 Q. Do you mean -- by those quotes, do you
19 mean to say that those were his exact
20 words?

21 A. That's what I recall that he said -- that
22 he said, yes.

23 Q. So you don't know if those were his exact
24 words?

1 Q. Do you have any knowledge that Kevin
2 McCabe was assisting Emile Tayeh with the
3 operation of the department?

4 A. I don't have -- I don't have any specific
5 knowledge.

6 Q. In paragraph 58 of your Complaint, sir,
7 you say, "Mr. Udemba has requested the use
8 of a company car, a cellular phone."

9 Is it your contention that the
10 refusal to give you a cellular phone is
11 evidence of discrimination on account of
12 race?

13 A. I believe that --

14 Q. Yes or no.

15 A. I believe that the refusal to provide me
16 with necessary tools for my work is
17 discriminatory and has something to do
18 with my race.

19 Q. Well, Mr. Udemba, I am going to ask the
20 question again. Are you claiming that the
21 refusal to give you a cell phone is
22 evidence of race discrimination? Yes or
23 no.

24 A. Not necessarily really, but I am saying

1 put it in the context of every other
2 thing. It has -- it -- you know, it's
3 racial discrimination. The cell phone
4 per se, not necessarily.

5 Q. Are you claiming that other people were
6 given cell phones and you weren't?

7 A. I'm saying --

8 Q. Yes or no, Mr. Udemba.

9 A. I don't know. I don't know what other
10 people were given.

11 Q. Isn't there a cell phone that anybody in
12 the environmental affairs department can
13 take with them when they leave the office?

14 A. Not that I know of.

15 Q. Okay. Okay. Now you say that you were
16 denied Internet access at the office?

17 A. Yes.

18 Q. Do you have Internet access now?

19 A. Yes.

20 Q. And how long have you had Internet access
21 at the office?

22 A. It was provided to me since I filed this
23 Complaint.

24 Q. Only after you filed the Complaint?

1 A. Yes.

2 Q. Okay. And who else had Internet access at
3 the office prior to your filing the
4 Complaint?

5 A. Emile had one.

6 Q. Yes.

7 A. Lorraine had one.

8 Q. Anybody else?

9 A. And a few other people.

10 Q. Who?

11 A. Those are the only names that I can
12 remember now.

13 Q. How do you know that they had Internet
14 access? I don't mean Emile or Lorraine.
15 I mean other people. How do you know that
16 they had Internet access at the office?

17 A. Because they had access to the Internet.

18 Q. How do you know?

19 A. I could hear that they have. I could hear
20 from. I could hear things.

21 Q. Okay. And is it your contention that
22 other people were given Internet access at
23 the office because they were white and you
24 weren't because of your race?

1 A. I believe that has something to do with
2 it.

3 Q. Based upon what?

4 A. Based upon the way I have been treated
5 generally; based on the fact that I have
6 not been promoted, for instance.

7 Q. Oh, okay. We talked about your mileage.
8 Is it -- do I understand your prior
9 testimony to be that you did not always
10 report your business mileage on company
11 reimbursement forms?

12 A. Yes.

13 Q. Well, would you say that the amount of
14 driving you did on company business that
15 was unreported was greater or less than
16 the mileage you did report?

17 A. I don't know.

18 Q. You don't know?

19 A. No.

20 Q. Okay. Okay. In paragraph 60 of your
21 Complaint, you say, "On numerous occasions
22 Mr. Udemba approached Mr. Tayeh about
23 CFI's discriminatory practices and its
24 failure to adequately compensate him for

1 don't know if he did or not.

2 Q. So you don't know if he did it or not?

3 A. No.

4 Q. Okay. In paragraph 63 of your Complaint,
5 you say that you requested a contract.

6 This was in what year?

7 A. 2003.

8 Q. Well, tell me exactly what was said in
9 that conversation.

10 A. What is that he threw this idea of -- he
11 has done it before.

12 Q. Can you tell me what you said and he said
13 in that conversation?

14 A. That I would become -- that I would make
15 more money if I would become an
16 independent consultant LSP for the
17 company.

18 Q. Did he say anything else?

19 A. No. That was the main focus.

20 Q. Did you say anything?

21 A. Yes. I said, "That sounds like a good
22 idea."

23 Q. Did either one of you say anything else,
24 or was that the sum total of the

1 conversation?

2 A. No, no. I said, "It is a good idea, but
3 I, you know, I will need a contract for
4 that, to do that."

5 Q. So what were you talking about? Quitting
6 your job and becoming an outside
7 consultant to Cumberland Farms?

8 A. He suggested that I could become -- you
9 know, he suggested as an alternative to
10 this, to, you know, to the company
11 regularizing my pay for additional
12 responsibilities, he suggested to me that
13 I could also become -- yes -- I could also
14 leave the company and become an
15 independent consultant LSP and then work
16 for the company as an independent
17 consultant LSP.

18 Q. Are you claiming that Emile's failure to
19 give you a contract as an outside
20 consultant to Cumberland Farms was due to
21 your race?

22 A. I believe so.

23 Q. Based upon what?

24 A. Because he has not promoted me, and then

1 been carrying on since 1997, and he didn't
2 do -- it wasn't done, and then in 2003
3 instead of that he figured out a way to
4 constructively get me out of the company
5 by telling me that, you know, you could
6 become an independent LSP working for the
7 company, making \$275,000 and --

8 Q. And is there anything else that happened
9 in 2003 that you contend was an act of
10 discrimination?

11 A. And when I asked for a contract, he
12 wouldn't give it to me, whereas other
13 white -- other white LSPs engaged -- other
14 -- other white LSPs engaged by the company
15 are given contracts.

16 Q. Wait a minute, Mr. Udemba. Was there
17 anybody else who was working for
18 Cumberland Farms that was given a contract
19 to work for the company as an LSP?

20 A. All the -- all the --

21 Q. No, no. Anybody -- any other employee.
22 I'm not talking about outside consultants.
23 Was there another employee like you?

24 A. We don't have any other employee LSP in

1 Cumberland Farms. I am the only in-house
2 LSP.

3 Q. Well, was there any other employee of the
4 environmental affairs department who was
5 given a contract to work for the company
6 by Emile Tayeh?

7 A. I don't know.

8 Q. So when you say other people who were
9 white were given contracts, you are
10 talking about people who never were
11 employees of Cumberland Farms? They
12 were --

13 A. I don't know.

14 Q. You don't know?

15 A. I said I don't know. You asked me. I
16 said I don't know.

17 Q. Okay. Is there anything else that
18 happened to you in 2003 that you claim was
19 an act of discrimination by the company?

20 A. I continued not to be promoted.

21 Q. Yes. You have already covered that.

22 A. Okay.

23 Q. Anything else?

24 A. I didn't get the company car that I needed

1 supervise another Licensed Site
2 Professional. Do you remember that
3 testimony?

4 A. With respect to Licensed Site Professional
5 work.

6 Q. Right. So prior to 1997, it is your
7 testimony that you had oversight over
8 outside consultants who were Licensed Site
9 Professionals. Are you now telling me
10 that you had oversight over everything
11 they did except their work as Licensed
12 Site Professionals?

13 A. No.

14 Q. That is a yes or no question.

15 A. No. It -- no. I -- I just want to make
16 sure that I understand your question. Let
17 me explain what I am saying so that I make
18 sure we are on the same wavelength. A
19 Licensed Site Professional can also
20 perform other duties other than Licensed
21 Site Professional.

22 Q. Stop right there, Mr. Udemba.

23 Prior to 1997, did the LSPs who
24 worked for the consultants that you

1 managed perform services for Cumberland
2 Farms as LSPs?

3 A. Yes.

4 Q. Did you supervise them in the performance
5 of those duties?

6 A. Yes.

7 Q. Even though you yourself were not a
8 Licensed Site Professional at the time?

9 A. No. I supervised their other duties.

10 Q. Then you didn't understand my question.

11 A. Exactly. That is why I wanted to explain
12 it, so that --

13 Q. Well, listen carefully, and I will do it
14 again.

15 A. Okay.

16 Q. Prior to 1997, did the LSPs employed by
17 the outside consultants that you managed
18 perform services for Cumberland Farms as
19 LSPs?

20 A. Yes.

21 Q. Did you supervise them in the performance
22 of those services? Yes or no.

23 A. Mr. Moss --

24 Q. Yes or no.

1 A. That's --

2 Q. Yes or no.

3 A. Yes.

4 Q. Even though you were not an LSP?

5 A. There is something called supervisory LSP.
6 Okay? If they're -- when they were --
7 when I was supervising them, when I'm not
8 an LSP, if they -- if there is a
9 violation, LSP-related violation, I would
10 not be liable for that.

11 Now that I'm an LSP and
12 supervising their project management
13 functions as well as their LSP duties, any
14 aspect of it that is an LSP duty that I
15 supervise, I am also liable. The law
16 provides that I am liable. If there is
17 any violation arising out of that that
18 they perform, the law provides that as a
19 supervising LSP I am also liable to that.
20 That is what is the law. It is inherent
21 in the LSP law.

22 Q. Mr. Udemba, that is all very interesting,
23 but it is not --

24 A. That is a fact.